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United States

# Circuit Court of Appeals

For the Ninth Circuit.

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## Transcript of Record.

(IN TWO VOLUMES.)

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PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OSBORN,  
JOHN W. F. PEAT, and L. M. DOHERTY,  
Appellants,

vs.

W. S. OVERTON and CARL A. MARTIN,  
Appellees.

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### VOLUME I.

(Pages 1 to 292, Inclusive.)

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Upon Appeal from the Southern Division of the  
United States District Court for the  
Northern District of California,  
Southern Division.

FILED

AUG 10 1922

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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(IN TWO VOLUMES.)

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PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OSBORN,  
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(Pages 1 to 292, Inclusive.)

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Upon Appeal from the Southern Division of the  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

R. T. HARDING, Esq., and HENRY E. MON-  
ROE, Esq., 275 Bush St., San Francisco, Calif.,  
and J. J. DUNNE, Esq., Mills Bldg., San Fran-  
cisco, Calif.,

Attorneys for Defendants and Appellants.

WILLIAM F. ROSE, Esq., 614 Mills Building,  
San Francisco, Calif.,

Attorney for Complainants and Appel-  
lees.

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Motion for Temporary Injunction.**

To the Honorable the Judge of the District Court  
of the United States, in and for the Northern  
District of California, Second Division:

Now come W. S. Overton and Carl A. Martin,

the complainants in the above-entitled suit, by William F. Rose and Bruce Glidden, complainants, solicitors and move the Honorable Court to grant a writ of injunction against defendants and each of them, their agents, attorneys, clerks, servants and employees, pending this suit, and until the further order of this Court, conformable to the prayer of the amended bill of said case filed, and based on this motion and notice thereof, and on said amended bill, the affidavits of W. S. Overton dated July 26th, 1915, July 27th, 1915, and of even date herewith and also on all the records, files and pleadings in this suit and on oral and documentary evidence.

Dated October 5, 1915.

WM. F. ROSE and  
BRUCE GLIDDEN,  
Solicitors for Complainants.

CHARLES CLYDE SPICER,  
Of Counsel.

Copy of within motion received this 6th day of October, 1915.

R. T. HARDING and  
HENRY E. MONROE,  
Solicitors for Defendants.

[Endorsed]: Filed Oct. 7, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [1\*]

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\*Page-number appearing at foot of page of original certified Transcript of Record.



In the District Court of the United States, in and  
for the Northern District of California,  
Second Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Motion to Appoint Temporary Receiver.**

To the Honorable the Judge of the District Court  
of the United States, in and for the Northern  
District of California, Second Division:

Now come W. S. Overton and Carl A. Martin, the  
complainants in the above-entitled suit, by William  
F. Rose and Bruce Glidden, complainants' solici-  
tors and move the Honorable Court to grant and  
appoint a temporary receiver herein pending this  
suit and until the further order of this Court and  
to take charge of the affairs of the said defendant  
corporation, Presidio Mining Company, conform-  
able to the prayer of said amended bill, and based  
on this motion and notice thereof and on said  
amended bill, the affidavits of W. S. Overton,  
dated July 26th and 27th, 1915, respectively and  
of even date herewith, and on all the records, files

and pleadings in this suit, and on oral and documentary evidence.

Dated October 5, 1915.

WM. F. ROSE and  
BRUCE GLIDDEN,  
Solicitors for Complainants.

CHARLES CLYDE SPICER,  
Of Counsel.

Copy of within motion received this 6th day of  
October, 1915.

R. T. HARDING,  
HENRY E. MONROE,  
Solicitors for Defendants.

[Endorsed]: Filed Oct. 7, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [2]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

W. S. OVERTON and CARL A. MARTIN, on  
Behalf of Themselves and Other Minority  
Stockholders of the PRESIDIO MINING  
COMPANY Named in This Complaint,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.



**Affidavit of Capt. W. S. Overton.**

State of California,

City and County of San Francisco,—ss.

Capt. W. S. Overton, being first duly sworn, on his oath, deposes and says: That he is one of the minority stockholders of the Presidio Mining Company, a corporation duly organized and existing under and by virtue of the laws of the State of California, which owns Section 8, comprising approximately 640 acres which said tract adjoins Survey No. 5 in Block No. 8 of Survey made for the Houston & Texas Central Railway Company, the same being situate in the County of Presidio, State of Texas; that he has examined the books of the San Francisco office of said Company and finds that ever since the execution of that certain resolution dated February 15, 1913, wherein and whereby Wm. S. Noyes caused the Board of Directors of said Company to vote him a bonus of \$45,000.00 for securing the execution of said Exhibit "B" to said Presidio Mining Company, that said Wm. S. Noyes has [3] systematically drained the treasury of said Company of all funds over and above the payment of salaries to the various officers of the Company, to pay himself the said bonus of \$45,000.00 and that this affiant firmly believes that he will continue to drain the Company of all moneys coming in from the sale of bullion over and above the payment of expenses at the mine and the payment of salaries to the officers at San Francisco, to

apply on his alleged claim of some \$43,000.00 which he claims to be due him from the contract attached to the complaint herein and marked Exhibit "C"; that affiant examined the books at the San Francisco office on Saturday, July 24, 1915, and found the cash on hand to be \$1252.31, and that there was bullion at the Selby Smelter, at Selby, California, of the value of \$9414.13; that it is the firm belief of affiant that said Wm. S. Noyes will, after deducting the actual operating expenses, pay to himself all of the remainder; that in support of said belief, affiant furnishes the following statement taken by him from the books of the Presidio Mining Company, showing the following sums to have been paid to Wm. S. Noyes, to wit:

## 1913

Feb. 27	Cash	\$11,000.
Mar. 18	Cash	5,000.
May 15	Cash	1,000.
Sept. 6	Cash	3,500.
Oct. 1	Cash	3,000.
Oct. 21	Cash	1,000.
Oct. 11	Cash	469.50
Dec. 29	Cash	3,485.90

## 1914

Jan. 2	Cash	1,500.
Mar. 7	Cash	1,000.
July 3	Cash	1,000.
Sept. 26	Cash	734.50

1915

Feb. 5	Cash	190.
Mar. 10	Cash	2,000.
May 6	Cash	3,786.20
June 28	Cash	5,035.20

Total (excepting salary)...\$43,701.30

[4]

Total amount claimed by Noyes, Feb. 15,  
1913, to June 1, 1915, for bonus, and  
ownership Section 5.....\$87,475.80

July 20, 1915, Secretary shows by ledger  
we owe Noyes on June 1, 1915.....\$43,774.50

The above sums are exclusive of and in addition  
to the salary paid to Wm. S. Noyes of \$450.00 per  
month, or \$5400.00 per year.

That this affiant firmly believes that unless the  
said Wm. S. Noyes and the directors and officers  
of said Company are restrained by order of this  
Court, that they will immediately make way with  
and pay to themselves all moneys now on hand and  
all moneys derived from the bullion at the Selby  
Smelter, as aforesaid; and, further, that said Wm.  
S. Noyes and said directors and officers of said  
Company will further squander and dissipate the  
assets of said corporation so as to seriously embar-  
rass said corporation and plunge the same further  
into debt, and that the said Wm. S. Noyes, unless  
restrained by the order of this Court, will dispose  
of Section 5 referred to and described in the Bill of  
Complaint herein; and, further, that said directors  
and officers of said Company will, unless restrained  
by order of this Court, dispose of and place beyond  
the reach of this action, the stock held by them

individually, and as Trustees, in the Presidio Mining Company; and, affiant further says that he firmly believes that unless this Court takes immediate possession of the books and records of said corporation, that said directors and officers of said Company will alter, deface, destroy or make way with the same. And further, affiant saith not.

CAPT. W. S. OVERTON.

Subscribed and sworn to before me this 26th day of July, A. D. 1915.

[Seal]                      HENRIETTA HARPER,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed July 28, 1915. Walter B.  
Maling, Clerk. [5]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

W. S. OVERTON and CARL A. MARTIN, on  
Behalf of Themselves and Other Minority  
Stockholders of the PRESIDIO MINING  
COMPANY Named in This Complaint,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Affidavit of Capt. W. S. Overton.**

United States of America,  
City and County of San Francisco,  
State of California,—ss.

W. S. Overton, being first duly sworn, on oath, deposes and says: That he makes this his supplemental affidavit as to matters discovered about 4:30 P. M. on the 26th day of July, 1915, and since filing the complaint in this action; deponent says that on the 20th day of July, 1915, he went to the Secretary of the Presidio Mining Company, to wit, Mr. L. Osborn, at #255 California Street, Room #204, which is the office of the Company, and asked said Osborn for a full and complete statement of the moneys paid to Wm. S. Noyes on account of the bonus which had been voted to said Noyes for securing a year's lease on "Section 5," otherwise known as Survey No. 5, in Block 8, of the Houston & Texas Central Railway Company's survey in Presidio County, Texas; and, on account of the contract dated the 19th day of November, 1913, between Wm. S. Noyes and the Presidio Mining Company, whereby the year's lease for which he had received a \$45,000.00 bonus, was cancelled and a new contract entered into whereby the Presidio Mining [6] Company was to mine and mill the ore and pay to Noyes one-half of the net profit plus \$1.00 per ton and was given, at that time, by said Osborn the following statement, to wit: That Noyes had been paid exclusive and in

addition to all salary, from the 27th day of February, 1913, to the 28th day of June, 1915, inclusive, the total sum of \$43,701.30 as set forth in detail in affiant's previous affidavit. Said Osborn also advised affiant that the total amount claimed by said Noyes on account of said bonus and said contract, was \$87,475.80; that affiant did not, at that time, think to ask said Osborn what the amount of cash on hand was, but that on the 24th day of July, 1915, he went to the office of the Company and asked said Osborn what the total amount of the cash balance was and was informed that it was \$1252.31; that affiant went to the office of said Company at 4:30 P. M. on this day to inquire as to what disposition had been made of the bullion at the Selby Smelter and the money therefrom, whereupon the following conversation took place between affiant and said Osborn:

“Overton: Has Noyes got that Smelter money in his pocket yet? Let me know when he gets it.

Osborn: No, it hasn't come yet.

Overton: He hasn't received any yet, then?

Osborn: Yes, he got \$6000.00 just after you left a few days ago; I don't remember just what it was.”

This conversation occurred on California Street a short distance from the office, whereupon affiant said: “I want to see the exact amount that was paid to Noyes,” whereupon affiant and Osborn repaired to the office of the Company where Osborn showed affiant the stub of the check-book which showed that



on July 20th, the very day that statement was furnished to affiant showing the total sums of money paid to Noyes, there had been paid to Noyes the [7] additional sum of \$6075.05 on account of the personal demands and claims of said Wm. S. Noyes against said corporation. This makes a total of \$49,776.35 which has been paid to Wm. S. Noyes and also makes a total of \$11,110.25 which has been paid to him within the last 30 days, and the \$1252.00 which is shown as cash on hand is probably reserved as a little more than enough to pay the current salaries of the officers of the San Francisco office.

WHEREFORE, affiant reiterates his firm belief that if the receipts from the bullion at the Selby Smelter are allowed to come into the hands of the officers of the Company, they will be immediately seized and taken by Wm. S. Noyes.

Affiant wishes further to state that this payment has been made since a day about one week ago when L. Osborn, the Secretary of the Company, told affiant that the Company was "bankrupt."

And further, affiant saith not.

W. S. OVERTON.

Subscribed and sworn to before me this 27th day of July, 1915.

[Seal] HENRIETTA HARPER,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed July 28, 1915. Walter B. Maling, Clerk. [8]

In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON, and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Affidavit of Capt. W. S. Overton.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

W. S. Overton, being first duly sworn, on oath,  
deposes and says: That he is one of the complain-  
ants in the above-entitled suit. That since the  
filing of the last affidavit made by him, he has  
discovered the following facts:

That on or about August 1, 1915, said Presidio  
Mining Company, instead of having any funds in  
its Treasury had an overdraft of \$3024.98. That  
notwithstanding the condition of said Company's  
Treasury, said Wm. S. Noyes, on or about Septem-  
ber 18, 1915, drew from the Company \$5819.15,  
alleged to be due him for ore purchases for the  
month of March, 1914, and claimed by him under



and by virtue of that certain resolution dated November 19, 1913, mentioned on page 12 of the amended bill of complaint filed herein. That on or about September 25th, 1915, the officers of said Presidio Mining Company drew a total sum of \$770 as salaries for said month.

That said Wm. S. Noyes has also drawn the following [9] sums of money as advance interest on money loaned by him to the corporation, and during the period of time when he was drawing large sums from the company on ore purchase accounts and while drawing a large salary for managing its business, to wit:

Jan. 27—1914	Interest in advance.....	\$400
May —1914	” ” ” .....	100
Aug. 17—1914	” ” ” .....	200
Mch. 4—1915	” ” ” .....	200
		<hr/>
Total.....		\$900

That said corporation has paid to the Selby Smelting and Lead Company, on interest on moneys advanced within the past year and a half the sum of \$150 and upwards; that the same officers have in addition paid other interest charges in the past two years on borrowed moneys, which have been drawn from the Treasury of the Company by said Wm. S. Noyes, during the periods of time aforesaid.

That on or about September 4th, 1915, said Wm. S. Noyes held a \$10,000 overdue note against said corporation on which he is drawing interest at 8% per annum, and while holding said note has drawn the payment of \$5819.15 on the ore purchase



**Supplemental Affidavit in Support of Application  
for Temporary Injunction.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

W. S. Overton, being first duly sworn on oath deposes and says: That he is one of the complainants in the above-entitled action, and makes this his supplemental affidavit on application by said complainants for the appointment of a receiver and for a temporary injunction. That since the preparation of the said motion deponent has discovered further facts material to said application, as follows:

That on or about the 23d day of September, 1915, L. Osborn resigned as Secretary and director of the Presidio Mining Company, and that one John Doherty was elected a director in his place and stead; that said John Doherty is a brother of L. M. Doherty, also a director of said corporation, and a defendant herein; that on or about said 23d day of September, 1915, John W. F. Peat was appointed Secretary of said company, at a salary of \$270.00 per month; that the said office of said corporation is, according to a notice upon the door thereof, to be open between the hours of 10 A. M. and 3 P. M., excepting on Saturdays, when the time given is from 10 to 12 A. M. That deponent on numerous occasions has been to said office to get information during said business hours and has found the same closed; that [11] deponent, since his return from

Texas on the 9th day of November, 1915, to date hereof has been able to get into said office but three times during said business hours above mentioned, although he has made ten attempts to get in during said announced office hours. That on October 15, 1915, deponent went to the office of counsel for defendants and requested that the office of said company be kept open during office hours and that he, said counsel, instruct his clients so to do; that to the best of deponent's knowledge and belief, said John W. F. Peat, one of the defendants in the above-entitled action, is engaged in other businesses in addition to that as secretary of said Presidio Mining Company, and spends most of his time attending to the same, and not to its affairs.

Deponent further says that B. S. Noyes, one of the defendants in the above-entitled action, in the presence of William S. Noyes, also a defendant herein, and also in the presence of their counsel, admitted the embezzlement by L. Osborn of the sum of \$10,689.75 from the treasury of the company, and that William S. Noyes used nearly all of the sum of \$11,000 obtained from the treasury of the company on the 24th and 28th days of February, 1913, in covering the shortage of said L. Osborn in said sum of \$10,689.75; that deponent accused said William S. Noyes, on or about the 14th day of October, 1915, of securing said Osborn's stock for compounding a felony, to wit, a crime committed by said L. Osborn, and said B. S. Noyes answered, in substance: "You could not expect anyone to give another ten thousand dollars for

nothing," and the said William S. Noyes did not contradict said statement. Said defendants further admitted, on or about said date, the retention of said Osborn as secretary of said company on a salary of \$300.00 per month, or thereabouts, for more than two and a half years since his embezzlement was covered [12] up and concealed by said W. S. Noyes; that said B. S. Noyes, William S. Noyes, and John W. F. Peat have admitted in the presence of deponent that they knew of the peculations of said Osborn of the sum of over ten thousand dollars of the company's funds, and that they concealed the same from the minority stockholders of said Presidio Mining Company; further that this deponent learned of said peculations from the State of Texas, and endeavored to trace the same in the books of the corporation in San Francisco, but found that the books and records hereinafter enumerated, and from which could be traced the amounts of said peculations during the years 1911 and 1912 and prior thereto, were missing, which said books and records this deponent has demanded, and which are missing from the company's records, said books and documents being as follows:

All canceled checks prior to January, 1913;

All check stub-books prior to March 18, 1913;

All bank pass-books prior to March 18, 1914;

All monthly bank statements prior to February 28, 1913;

That the last embezzlement known to deponent occurred January 16, 1913.

That deponent heard rumors from Texas that the



peculations of L. Osborn amounted to \$27,000, which led to his investigation and discovery of the sum of \$10,689.75, and after checking up and proving the same, it was admitted by the said last above-named directors of said Presidio Mining Company, although shortages in said accounts of L. Osborn had previously been denied to deponent. Said defendant William S. Noyes at said time and place also stated that he had destroyed certain Thiel and other detective reports in his possession, paid for from the treasury of the company; that said defendants have [13] refused to give any aid to deponent, and have refused to permit him to obtain access to the Thiel Company's records containing any references or memoranda covering said reports or their contents; and said defendants William S. Noyes and B. S. Noyes have destroyed correspondence passing between themselves and E. M. Gleim, the present superintendent of said mine in Shafter, Presidio County, Texas, and said E. M. Gleim at said time and place admitted in the presence of said B. S. Noyes and William S. Noyes and deponent that he had destroyed and had continued to destroy all letters received from the office of William S. Noyes, its Vice-president and General Manager, which did not have the title "Superintendent" on the envelope, even though the contents of said letters referred to company matters. Deponent further says that at said time and place, to wit, October 14, 1915, in San Francisco, the physical condition of said Osborn was represented to deponent to be so serious that he could not be seen,

and that he was practically in a dying condition; that thereafter, and on or about the 9th day of November, 1915, William Osborn, son of said L. Osborn, filed a petition in the Superior Court of the State of California, in and for the city and county of San Francisco, stating the said L. Osborn was excessively addicted to the use of intoxicating liquors and stimulants, and that he was an inebriate, and that if said L. Osborn would be committed to the State Hospital for treatment there were reasonable grounds for believing that he would be permanently benefited thereby; that thereupon an order of arrest was made by Honorable E. P. Mogan, Judge of said Superior Court, and that on the 10th day of November, 1915, said L. Osborn was found to be addicted to the intemperate use of stimulants, and was after hearing, and without any objection on his part appearing, ordered [14] committed to Agnew's State Hospital for treatment, and is now in said institution; that deponent believes, and so avers the fact to be, that said defendant L. Osborn was committed to said institution to prevent a criminal prosecution for his embezzlement of the company's funds, and that said commitment was made after this deponent had threatened to attempt to secure an indictment by the Grand Jury of the city and county of San Francisco against said L. Osborn, and this deponent had placed before the office of the District Attorney of the city and county of San Francisco the facts thereof against said L. Osborn, and also facts relative to his having made false affidavits as to the financial affairs and

condition of the said corporation. Deponent further says that he has been informed by F. H. Gardiner and E. A. Herger, former directors of the Presidio Mining Company, that the purported minutes of the meeting of the Board of Directors of said company, held January 29, 1913, and as found on pages 28 and 30 of the minute-book of said company, do not contain a correct account of the proceedings of said meeting; deponent is informed and believes, and so avers, that said minutes are false in this, viz.: that said minutes falsely state that B. S. Noyes was elected a director and President of said corporation; that said minutes falsely state that John W. F. Peat resigned as President of said corporation, and was elected Assistant Secretary of said company; that a copy of said minutes relative to the foregoing facts as found on pages 28 and 30 of the minute-book of said corporation is attached hereto, marked Exhibit "A."

That deponent further says that by reason of the purported election of B. S. Noyes as a director of the Presidio [15] Mining Company on January 29, 1913, and the subsequent resignation of F. H. Gardiner and E. A. Herger, that a quorum was not present on January 31, 1913, at a purported meeting of the Board of Directors of the Presidio Mining Company, at which time William S. Noyes and L. M. Doherty were alleged to have been elected directors; that the only legally elected directors at said meeting on January 31, 1913, and also at the meeting of February 15, 1913, were L. Osborn and J. W. F. Peat, being only two out of five directors



of said company. That on February 15, 1913, at said purported directors' meeting of said company, there was adopted the so-called "bonus" resolution authorizing the payment of \$45,000 to William S. Noyes for securing a lease on said Section 5 from the Silver Hill Mill & Mining Company as the ostensible owner thereof (and at which time William S. Noyes was the real owner of said Section 5, by reason of his having obtained the possession of practically all of the capital stock of said Silver Hill Mill & Mining Co.), and by which resolution \$11,000 was ordered to be paid forthwith to said William S. Noyes by a Board of Directors of which L. Osborn and John W. F. Peat were the only legally authorized directors to vote, and which authorization directing the payment of said \$11,000 was voted upon by said L. Osborn and John W. F. Peat, together with B. S. Noyes and L. M. Doherty, and pursuant to which \$11,000 was drawn from the company's treasury and paid to said William S. Noyes, and practically said entire amount, to wit, \$10,689.75, was used by said William S. Noyes in making good the then existing shortage of L. Osborn.

Deponent further says that he has endeavored to ascertain the cost of production of ore from Section 5, and the quantity produced since January 25, 1913, to date hereof, and the methods [16] of computing the cost and the manner of figuring the net profits thereof, and has applied to the offices of the company in San Francisco for the records so to do, that he might get expert advice to assist him. That the officials in the San Francisco office of said

company have informed deponent that said records of said production were at the mine in Texas; that said deponent, just prior to the 1st day of November, 1915, applied to B. S. Noyes, President of said corporation, for authority to see all records in the company office in Texas, and said official refused to give deponent permission so to do; that attached hereto, marked Exhibits "B" and "C," are copies of letters sent to the Presidio Mining Company officials, and in response to which John W. F. Peat, the Secretary of said corporation, stated that B. S. Noyes, President of said Presidio Mining Company, refused to answer said letters; that attached hereto, marked Exhibit "D," is a copy of a letter sent to said President, B. S. Noyes, on the 2d day of November, 1915, at the time of this deponent leaving for Texas, requesting permission to use the books and records of said corporation at its mine in Shafter, Texas; that said office in Shafter, Texas, does a large and involved business requiring the keeping of numerous and sundry accounts, receipts and vouchers, and disburses approximately twenty thousand dollars per month; that said records are important, and deponent desires to have access thereto and have the same experted. That while in Texas within the past thirty days, deponent applied to E. M. Gleim, the superintendent in charge of said mine in Texas, for permission to look through the company's books and records there, and said E. M. Gleim notified deponent that on the advice and instructions of counsel for defendants herein, and acting under the orders of B. S. Noyes,

[17] President of the company, he, said E. M. Gleim, refused to give this deponent any opportunity to inspect the books or records in his charge at said mine. That within the last two weeks, in the office of the District Attorney of the city and county of San Francisco, statements and representations on behalf of defendants have been made that deponent had had access to all the books and records of the company relative to its affairs; that this deponent states that important records relative to the production of ore from Sec. 5 have been withheld from him by the officers of said Presidio Mining Company, who have represented to him that the records necessary thereto were in the company office in Texas, and that the above refusal on the part of the Supt., E. M. Gleim, for deponent to see said records prevents his ascertaining how or by what means, or the truthfulness of, the computations made by which William S. Noyes bases his claims and draws out money from the company's treasury from time to time in addition to his salary.

Deponent further says, that since the submission of the application for a temporary restraining order, said Wm. S. Noyes has drawn the following sums from the company's treasury—viz., \$3650, Nov. 15, 1915, and \$2556.60, Dec. 1, 1915, claiming the same for ore taken from Sec. 5; this deponent further avers that he believes, that unless restrained, the said defendants, and particularly said Wm. S. Noyes, will continue to draw large sums of money from the company's treasury, to the detriment and injury of deponent and the other minority stockholders of said company.

Deponent further says that unless restrained and prevented from drawing further sums from the treasury of the company by the said San Francisco officers and directors of said [18] corporation, both as salaries and otherwise, excepting only for the payment of such sums as are reasonably necessary to carry on and conduct operations at the mine in Texas, that the minority stockholders of said Presidio Mining Company will suffer irreparable injury and damage, and that they have no plain, speedy or adequate remedy at law. And further deponent sayeth not.

W. S. OVERTON.

Subscribed and sworn to before me this 4th day of December, 1915.

[Seal]

W. H. PYBURN,

Notary Public in and for the City and County of  
San Francisco, State of California. [19]

**Exhibit "A."**

(From Page 28, Minute-book.)

San Francisco, Cal., January 29, 1913.

**DIRECTORS' MEETING.**

A meeting of the Board of Directors of the Presidio Mining Company called by order of the President was held this day at the office of the Company room No. 204 No. 255 California Street, City and County of San Francisco, State of California.

Notices in writing were served upon each director and there were present thereat a majority of the Board as follows:—John W. F. Peat, presiding,

F. H. Gardiner, E. A. Herger, L. Osborn. Chas. H. Fish was absent.

(From Page 30.)

Whereas Chas. H. Fish, one of the members of this Board has ceased to be a stockholder in this corporation and for that reason is disqualified to serve as director, be it

Resolved that the place upon this Board of Directors heretofore occupied by said Chas. H. Fish be and the same is hereby declared vacant.

Upon motion duly made, seconded and carried Mr. B. S. Noyes was unanimously elected a director of this corporation in place of Chas. H. Fish to serve until the next election of the Board of Directors and until his successor is elected and qualified.

Mr. John W. F. Peat thereupon tendered his resignation as President of this corporation.

Upon motion duly made, seconded and carried, Mr. B. S. Noyes was unanimously elected President of this corporation. [20]

Upon motion duly made, seconded and carried Mr. John W. F. Peat was elected Assistant Secretary of this corporation and his salary fixed at \$25.00 per month.

Upon motion of F. H. Gardiner seconded by E. A. Herger, it was

Resolved that the President and Secretary of this Company are jointly authorized to sign the name of this company to checks, drafts, bills of exchange, notes and other evidences of indebtedness and the President shall have power to confer the authority hereby given him on other officers of the Company



as may, in his judgment, be necessary to facilitate its business.

The Secretary now paid to each director present the sum of \$5.00 making a total of \$20.00.

There being no further business before the meeting, upon motion duly made and seconded the meeting adjourned. [21]

**Exhibit "B."**

Office PRESIDIO MINING CO.

255 California Street,

San Francisco, Cal.

October 27, 1915.

President,

Presidio Mining Company,

San Francisco, Cal.

Sir:—

Replying to your letter of October 23, 1915:

1. The Secretary of the Presidio Mining Company is unable to or fails to furnish for my inspection any of the papers or records enumerated in paragraph 1 of my letter of October 15, 1915.

2. In reply to my request in letters of October 15 and 21, you state "There are no reports in the office or in the possession of Mr. W. S. Noyes or myself from any detective agency. I decline to write any letter for you excepting such as are required by law."

Acting under advice of my attorney I wish to call your attention to Paragraph 565 of the Penal Code, State of California:



“Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.”

I wish to remind you that these papers *were* in the “custody” of the present officers of the Presidio Mining Company until they were destroyed by Mr. W. S. Noyes, as he has himself admitted; these papers are now under the “control” of said officers because their authorization will enable me to see these reports now intact and in the possession of the Thiel Detective Agency, El Paso.

I have been informed by those who have them that some of these reports had to do with the personal affairs of Mr. W. S. Noyes, although they were paid for as being company business. The destruction of these reports and the emphatic refusal of the officials of the Presidio Mining Company to allow me to see them, though they claim them to be relating only to business of the company, bears out my other evidence as to their real nature.

I therefore renew my request that I be given written authority to see these reports in possession of the Thiel Detective Agency at El Paso, in accordance with Paragraph 565 above quoted.

3. In paragraph 4 of your letter you state “All letters [22] of Presidio Mining Company, sent or

received, are in the office. The private files of Mr. W. S. Noyes and myself will not be opened to you."

I have no desire to inspect the private files of any person on any matter. I deny however the right of any salaried officer of the Presidio Mining Company to keep in his private files or to destroy any letter or record pertaining to the company of which I am a stockholder. At the mine in August, 1915, the superintendent admitted to me that if an envelope was addressed to him personally he destroyed the letter, though it was from Company officials and bore on company matters. Though as a stockholder I then warned him not to do so, he again admitted in the office of the Bond and Warrant Clerk, October 14, 1915, that he has continued the same practice.

I therefore call for the complete files of all letters sent or received by any of the salaried officers of the corporation relating in any way to company business. I also call upon you to direct the Superintendent at the mine to furnish me, when I go there to inspect, with a complete file of all letters and code messages, etc., received and sent by him relating in any way to company matters.

4. In your letter of October 25 to the Superintendent of the mine in compliance with my written request of October 21, you give me authority to visit the mine, but say nothing about inspecting the company books and records in the office at the time.

I must therefore repeat my request and ask that you give the Superintendent the same instructions as to the books and records and all company papers

that you have given in your letter of October 25 regarding the mine, including the right to inspect the same with expert assistance.

As I expect to leave for the mine as soon after November 1 as possible, early attention to this letter would be appreciated.

Yours truly,

(Signed) W. S. OVERTON. [23]

**Exhibit "C."**

Office PRESIDIO MINING CO.

255 California St.

San Francisco, Cal.

October 30, 1915.

President,

Presidio Mining Co.

In my letter of recent date I asked for early attention because as stated in my letter I expected to leave for Texas as soon after Nov. 1st as possible.

In view of this fact and also we are to appear in the Bond & Warrant's Clerk's office at 11 A. M. on Monday, Nov. 1st, I request that my letter be answered before this meeting, so that I may act accordingly.

I will be in the company office at 12 o'clock to-day and if it is impossible to get an answer by that time, I will be again in the office at 10 o'clock Monday morning.

Yours truly,

(Signed) W. S. OVERTON. [24]

**Exhibit "D."**

995 Pine St., San Francisco, Cal.

November 2, 1915.

The President Presidio Mining Co.,  
San Francisco, Cal.

Sir:—

I wish to acknowledge the message you sent me verbally by Mr. J. W. F. Peat, Secretary. Mr. Peat informs me that you sent the information that you refused to answer my letters because you were tired of writing letters to me.

I have also received the message from your counsel, Mr. R. F. Harding, that you refuse to allow me to see the records and books kept at the mine at Shafter, Texas.

In this connection, I wish to call your attention to the threats Mr. L. Osborn, then secretary, made to me when I started my investigation. Among others I was threatened with financial ruin because "we have more money than you have." I do not state that this refusal on your part to permit a large stockholder to see his company records is part of the carrying out of this threat but I have the right to draw that conclusion.

In this connection I may add that Mr. Osborn made such a habit of threatening me that Mr. Peat, though himself unfriendly to me, protested to Mr. Osborn to stop it. These threats I have carefully written down at the time as he and Mr. Peat both know.

Further, since I have proved embezzlement of large sums aggregating \$10689.75 in this office, and you have admitted in the District Attorney's office that you knew and concealed this embezzlement, I feel justified in drawing the conclusion that there are other matters you are endeavoring to conceal by refusing me to see those books. I therefore ask you to rescind your orders that I am not to have access to the books at the mine.

Very truly,  
(Signed) W. S. OVERTON.

Copy of within affidavit received this 6th day of December, 1915.

R. T. HARDING,  
HENRY E. MONROE,  
Attys. for Defendants.

[Endorsed]: Filed Dec. 7, 1915. W. B. Maling,  
Clerk. By J. A. Shaertzer, Deputy Clerk. [25]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Supplemental Affidavit in Support of Application  
for Temporary Injunction.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

Frank H. Gardiner, being first duly sworn on oath deposes and says: That he is and has been for a number of years last past continuously a resident of the city and county of San Francisco, State of California, and is a citizen of said State, and is not a party to the above-entitled suit. That on the 29th day of January, 1913, deponent was a director of the Presidio Mining Company; that he had been a director of said corporation continuously since on or about the 4th day of March, 1907, and was such up to and including the said 29th day of January, 1913; that on said 29th day of January, 1913, the directors of said corporation were L. Osborn, John W. F. Peat, Charles H. Fish, E. A. Herger and deponent; that on said 29th day of January, 1913, a directors' meeting was held in the office of the said Presidio Mining Company, in the city and county of San Francisco, State of California, at which meeting this deponent was present. [26]

That to the best recollection and belief of this deponent the purported minutes of the Presidio Mining Company, as set forth on pages 28 and 30 of the minute-book of said corporation, a portion of which minutes are attached hereto by copy thereof marked Exhibit "A," do not set forth what actually



transpired at said meeting, and are false in the following particulars:

That it is not true that "the place upon this Board of Directors heretofore occupied by said Chas. H. Fish be and the same is hereby declared vacant." Said purported minutes are further false in stating that B. S. Noyes was unanimously elected a director in the place of Charles H. Fish. Said purported minutes are also false in setting forth that John W. F. Peat tendered his resignation as President of the corporation. Said purported minutes are further false in this, that they state B. S. Noyes was unanimously elected President of this corporation. They are also false in this, that they state that John W. F. Peat was elected Assistant Secretary of this corporation and his salary fixed at \$25 a month. This deponent distinctly recollects the resolution relative to the execution of that certain lease between the Silver Hill Mill & Mining Company and the Presidio Mining Company dated January 25, 1913, by the terms of which fifty cents per ton royalty was to be paid by the Presidio Mining Company for all ores extracted by it from Sec. 5 adjoining its property.

This deponent further says, he never attended further meetings of said Board of Directors of Presidio Mining Company after January 29, 1913; that he knew nothing of said records till the matter was called to his attention by Captain W. S. Overton on or about October 23, 1915; that deponent resigned as a director of said Presidio Mining Company upon request, on or about [27] the 31st day of Janu-

ary, 1913, and after the meeting held on said 29th day of January, 1913; deponent further says that he held ten shares of stock of said corporation, and endorsed the same in blank on the certificate evidencing said shares, and that the said certificate was kept by L. Osborn. Further deponent sayeth not.

FRANK H. GARDINER.

Subscribed and sworn to before me this 4th day of December, 1915.

[Seal]

HUGH F. SIME,

Notary Public in and for the City and County of  
San Francisco, State of California. [28]

**Exhibit "A."**

(From Page 28, Minute-book.)

San Francisco, Cal., January 29, 1913.

**DIRECTORS' MEETING.**

A meeting of the Board of Directors of the Presidio Mining Company called by order of the President was held this day at the office of the Company room No. 204 No. 255 California Street, City and County of San Francisco, State of California.

Notices in writing were served upon each director and there were present thereat a majority of the Board as follows: John W. F. Peat, presiding, F. H. Gardiner, E. A. Herger, L. Osborn. Chas. H. Fish was absent.

(From Page 30.)

Whereas Chas. H. Fish, one of the members of this Board has ceased to be a stockholder in this

corporation and for that reason is disqualified to serve as director, be it

Resolved that the place upon this Board of Directors heretofore occupied by said Chas. H. Fish be and the same is hereby declared vacant.

Upon motion duly made, seconded and carried Mr. B. S. Noyes was unanimously elected a director of this corporation in place of Chas. H. Fish to serve until the next election of the Board of Directors and until his successor is elected and qualified.

Mr. John W. F. Peat thereupon tendered his resignation as President of this corporation.

Upon motion duly made, seconded and carried, Mr. B. S. Noyes was unanimously elected President of this corporation. [29]

Upon motion duly made, seconded and carried Mr. John W. F. Peat was elected Assistant Secretary of this corporation and his salary fixed at \$25.00 per month.

Upon motion of F. H. Gardiner seconded by E. A. Herger, it was

Resolved that the President and Secretary of this Company are jointly authorized to sign the name of this company to checks, drafts, bills of exchange, notes and other evidences of indebtedness and the President shall have power to confer the authority hereby given him on other officers of the Company as may, in his judgment, be necessary to facilitate its business.

The Secretary now paid to each director present the sum of \$5.00 making a total of \$20.00.

There being no further business before the meeting, upon motion duly made and seconded the meeting adjourned.

Copy of within affidavit received this 6th day of December, 1915.

R. T. HARDING,  
HENRY E. MONROE,  
Attorneys for Defendants.

[Endorsed]: Filed Dec. 7, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON, and CARL A. MARTIN,  
Complainants,

vs. .

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

**Supplemental Affidavit in Support of Application  
for Temporary Injunction.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

E. A. Herger, being first duly sworn on oath de-

poses and says: That he is a citizen of the State of California and a resident of the city and county of San Francisco, in said state and is not a party to the above suit. That from on or about the 4th day of March, 1907, continuously up to and including on or about January 31, 1913, deponent was a director of the Presidio Mining Company, one of the defendants above named; that on the 29th day of January, 1913, L. Osborn, John W. F. Peat, Charles H. Fish, F. H. Gardiner and deponent were directors of said Presidio Mining Company; that said directors last above named were such at a meeting of said board held January 29, 1913; that on or about October 27th, 1915, in San Francisco, deponent had shown him by Capt. W. S. Overton, a purported copy of the minutes of said meeting of the said board of directors of said Presidio Mining Company, held January 29, 1913; that said purported minutes, to the best recollection and belief of deponent are false in the following respects:

In stating that B. S. Noyes was elected a director and president of said corporation; in stating that John W. F. Peat [31] resigned as President of said corporation and was elected assistant secretary of said company at a salary of \$25 per month.

That shortly after January 29, 1913, deponent received notice that his relations with said Presidio Mining Company were terminated. That deponent remembers voting on January 29, 1913, for the resolution whereby the payment of 50 cents per ton royalty was authorized to be paid for all ore taken

from Section 5, the property adjoining the ground of the said Presidio Mining Company.

That while deponent was a director of said company, his stock was indorsed by him and remained in the possession of the Secretary, L. Osborn.

Further deponent sayeth not.

E. A. HERGER.

Subscribed and sworn to before me this 6th day of December 1915.

[Seal]

W. H. PYBURN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Copy of the within affidavit received this 6th day of December, 1915.

R. T. HARDING,  
HENRY E. MONROE,  
Attorneys for Defendants.

[Endorsed]: Filed Dec. 7, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]



In the District Court of the United States in and  
for the Northern District of California, Sec-  
ond Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN

Complainants,

vs.

PRESIDIO MINING COMPANY a Corporation,  
WM. S. NOYES B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

**Affidavit of W. S. Noyes in Reply to Supplemental  
Affidavits of Plaintiffs.**

State of California,  
City and County of San Francisco,—ss.

W. S. Noyes, being first duly sworn, deposes and  
says: That he is one of the defendants in the above-  
entitled action, and makes this affidavit in reply to  
the so-called “supplemental affidavit in support of  
application for temporary injunction” of W. S. Over-  
ton, filed herein on the 7th day of December, 1915.

Affiant admits that on or about the 23d day of  
September, 1915, L. Osborn resigned as Secretary  
and also as a director of the Presidio Mining Com-  
pany, and that John Doherty was elected a director  
in the place of the said Osborn; that said John  
Doherty is a brother of L. M. Doherty who is also  
a director and a defendant herein; that on or about

said 23d day of September, 1915, John W. F. Peat was appointed Secretary of said corporation, at a salary of \$270.00 per month.

Answering that portion of said affidavit commencing with line 14 on page 2 thereof and ending with the word "statement" [33] in line 28 on said page 2, this deponent says that said matter as there set forth is false and untrue, except as hereinafter stated; and in regard to said matter, answers as follows:

That on or about the 14th day of October, 1915, this deponent, together with the defendant B. S. Noyes and their counsel, R. T. Harding, appeared before R. W. Barrett, a Deputy District Attorney for the city and county of San Francisco, from whom the plaintiff W. S. Overton was seeking to obtain a warrant for the arrest of the defendant L. Osborn, on a charge of embezzlement, and a warrant of arrest for this defendant on a charge of compounding said alleged crime of embezzlement. That this deponent and the said B. S. Noyes stated to said Barrett that in January of 1913 they had discovered that the said L. Osborn was short in his accounts with said corporation in the sum of \$10,-689.75. That affiant further informed said Barrett that in February 1913, he had loaned the said L. Osborn the sum of \$10,689.75 with which to make good said shortage, and that said shortage had then been made good and that none had existed since that time; and further, that at the time of said loan this affiant had taken the promissory note of said Osborn for said sum, and that the same was secured

by a pledge of stock in the Presidio Mining Company owned by said Osborn. That said loan remained unpaid, and that affiant still held said note and security.

That the said Overton then and there charged that the act of this deponent in loaning said sum of \$10,689.75 to the said Osborn and taking security therefor constituted the crime of "compounding a felony." That in response to said charge the defendant B. S. Noyes remarked that "You could not expect anyone to lend another ten thousand dollars without security" or used words to that effect. That said B. S. Noyes did not make the [34] statement, "you cannot expect anyone to give another ten thousand dollars for nothing" or any other similar statement in connection with or bearing upon the charge that this deponent had received anything from said Osborn for said loan, other than said promissory note and the security therefor.

Further answering said last-mentioned portion of said affidavit to the effect "that W. S. Noyes used nearly all of the sum of \$11,000 obtained from the treasury of the company on the 24th and 28th days of February, 1913," this deponent says that said \$11,000 is a portion of the moneys paid to this affiant by the Presidio Mining Company on account of ore purchases made by said Company from him, as fully set forth in the answer of this affiant in this suit, and particular reference is here made to the following portions of the answer of this deponent in the matter of the above-entitled action, to wit:

Commencing with line 29 on page 50 thereof, down to and including the word "lessor" in line 12, on page 53 thereof.

Further referring to said shortage of \$10,689.75, deponent says that the same was discovered on or about the 19th day of January, 1913, and that all of the transactions out of which said shortage accrued, took place prior to said 19th day of January, 1913, and that this deponent had no knowledge or [35] suspicion thereof prior to said date.

That for a long time prior to the 12th day of December, 1912, this deponent had been the owner of 28,507 shares of the capital stock of said Company standing on the books of the Company in the name of L. Osborn, and that he had said shares transferred into his name on said last-mentioned date. Deponent further says that neither the acquisition by him of said shares of stock, nor the transfer thereof into his own name had any connection with or relation to said shortage.

Deponent further states that he became a director of said Presidio Mining Company on the 31st day of January, 1913, and that the defendant B. S. Noyes became a director of said corporation on the 29th day of January, 1913. That the said L. Osborn had held the office of Secretary of said corporation at a salary of \$300 per month for about twenty-five years prior to the discovery of said shortage, and that it is true that said L. Osborn was permitted to hold said position at said salary until he resigned as Secretary and director on or about September 23d, 1915. That the facts and circumstances under

which he was allowed to continue in said position of Secretary are as follows:

That shortly after said shortage was discovered he consulted with Mrs. India Scott Willis, who was then the holder of about 37,000 shares of the capital stock of said Presidio Mining Company. That the said Osborn was a personal friend of Mrs. Willis and had been in the employ of said company for over twenty-five years, and had grown old in its service, and was dependent upon his salary from said Company for his support, and that of his family. That it was the desire of Mrs. Willis that said Osborn should be continued in the employ of the Company, if it could be done with [36] safety, and that said matter should not become public and bring humiliation upon his innocent family. That this affiant demanded as a continuance of such employment that he and his brother B. S. Noyes should be elected directors of said Company, and also demanded that the said India Scott Willis should go on said Board, or that she should name a responsible representative upon said Board. That said arrangement was assented to by the said Mrs. Willis, and it was arranged that the defendant B. S. Noyes should also be elected President of the Company and that this affiant should be elected Vice-President, so that the said B. S. Noyes or this affiant would have to sign all corporate checks and could by that means safeguard the corporation against future tampering with its funds.

That in pursuance of said arrangement the said B. S. Noyes was elected a director of said corpora-



tion on the 29th day of January, 1913, and was also elected President on said day. That the said India Scott Willis requested that the defendant L. M. Doherty be elected a director of said corporation to represent her on said Board, and that thereafter at a meeting of said Board held on January 31st, 1913, this affiant was elected a director and also Vice-President, and the said L. M. Doherty was elected a director.

That at said time said corporation was in a precarious financial condition, and was seeking to install a cyanide plant and other needed machinery and improvements to save it from financial ruin. That Mrs. Willis and this affiant and other stockholders to whom said shortage was known realized that if the same became known, the credit of said corporation would be so seriously affected as to make it impossible to install said needed improvements, and for that reason said fact was not made [37] known to more persons than necessary for the benefit of all stockholders, including said plaintiff.

In this connection affiant further says that for more than six years prior to February, 1913, the affairs of said corporation had been conducted by the said Osborn, as Secretary and director in conjunction with four dummy directors, of whom Chas. H. Fish was succeeded by B. S. Noyes on said Board, and of whom F. H. Gardiner and E. A. Herger were succeeded on said Board by this affiant and the said L. M. Doherty.

That it is true that the cancelled checks of said



corporation prior to January, 1913, cannot be found and that the check stub-book and pass-book prior to March, 1913, cannot be found; that it is also true that the monthly bank statements prior to February, 1913, could not be found, but were replaced by statements obtained from the books of the bank, at the request of the plaintiff W. S. Overton, and were placed in his hands for examination.

That the present officers of said corporation had the books of said corporation examined by Stewart & Haley expert accountants in the month of July, 1915, and that said accounts were found to be correct, and that said plaintiff W. S. Overton was furnished the report of said accountants and was permitted to make a copy thereof and was also furnished full access to all books, accounts and data kept by the corporation at its office in San Francisco, California; and that said books of account kept by said corporation since the present Board of Directors have been in office show every item of receipts and expenditures, and the source whence received and the purposes for which expended.

Answering said portion of said affidavit of W. S. [38] Overton, wherein at the bottom of page 3 thereof, he states that "said defendant William S. Noyes at said time and place also stated that he had destroyed certain Thiel and other detective reports in his possession, and paid for from the treasury of the company; and that said defendants have refused to give any aid to deponent, and have refused to permit him to obtain access to the Thiel Company's records contain-

ing any references or memorandum covering said reports or their contents." This affiant says, that said reports were obtained to ascertain the identity and operations of labor trouble makers at the works of the corporation at Shafter, Presidio County, Texas. That said corporation employs about 150 laborers at its mine and mill at said place and that about two-thirds of said number are Mexicans. That certain ring-leaders among them have constantly endeavored to enlist said Mexicans on one side or the other of the Mexican Revolutionary movements and have sought to embroil said laborers in partisan strife to the great danger of the Company's property and welfare. That it was necessary for the peace and safety of said corporation and its property to ascertain said disturbers and trouble-makers in order that they might be weeded out, and to that end employed detectives of the Thiel Detective Agency which has an office at El Paso, Texas. That the reports so obtained were confidential and if not kept confidential, such agency would no longer furnish such services, should they be required in the future. That the original of said reports were sent to the Superintendent at Shafter, Texas, and copies thereof were furnished to this affiant at San Francisco. That when said reports had served their purpose, the same were destroyed, in order that their contents should not become public, and further that the officers of said corporation have declined to give said plaintiff W. S. Overton an order upon said Thiel Agency for an inspection of their files, for the [39] reason that

such order would be in violation of the contract between the corporation and said Agency to treat said reports as confidential.

Answering said affidavit as to the matter therein contained on page 4 thereof that this affiant has destroyed correspondence between himself and E. M. Gleim, the present superintendent, this affiant says that all official correspondence between this affiant and said Gleim is now on file in the Company's office and that none of such correspondence has been destroyed, and that no other records of said Company have been destroyed or withheld from said plaintiff since the present Board of Directors have been in office.

Answering that portion of said affidavit commencing with line 28 on page 6 thereof, and ending with the word "experted" in line 25 on page 7 thereof, this deponent says that said Section 8 and Section 5 mentioned in said affidavit are adjoining mines of like character and are connected by tunnels and underground drifts, and that the cost of mining in said two properties is now the same and that the methods of computing the cost and the manner of figuring the net profits thereof is the same as to both properties, and that no segregation of costs of production of ore from said two mines is kept by the said Presidio Mining Company otherwise than hereinafter stated. That the agreement between this deponent, as party of the first part, and the Presidio Mining Company, as party of the second part, dated the 19th day of November, 1913, and under the terms and provisions of which said Sec-

tion 5 is now worked by said Presidio Mining Company, contains the following provisions, to wit:

“A record shall be kept of the number of tons of ore taken by the party of the second part (Presidio Mining Company) [40] from said mine (Section 5) and the average assay thereof in the stope from which it is taken; a similar record shall be kept of the ore taken by the party of the second part during the same period from its own mine (Section 8) and from the two records so obtained and kept, the average stope assays of all the ores milled from both of said mines for a given period shall be deduced. After said ore shall have been milled, the average extraction in fine ounces of silver shall be ascertained and the percentage or average stope assays actually extracted shall be calculated and determined and the gross value of its ore taken during such period from the Silver Hill Mine (Section 5) shall be deemed to be the average stope assays multiplied by said percentage of extraction. From such gross value the actual cost of mining and milling, less the sum of One (1) Dollar per ton for the smaller cost of mining in said Silver Hill Mine as compared with the mine of the party of the second part, shall be deducted and the difference shall constitute the net value of the ore so taken during that period by the party of the second part from the said Silver Hill Mine. Freight, expressage, insurance and the refinery charges upon the bullion obtained from such

ores shall be treated as a part of the cost of reduction.”

In regard to said contract, this deponent says that at the time of the making of said contract the actual cost of mining and milling ores from said Section 5 was estimated to be less by the sum of one (1) dollar per ton than the cost of mining and milling ores from Section 8, but that in September, 1914, it was ascertained that the cost of mining and milling said ores from said two properties was about equal, and that such condition has existed ever since said time, and that by reason of such condition this affiant has waived said allowance of one (1) dollar per ton made to him under said contract for ores extracted from said Section 5, and that ever since said September, 1914, the cost of production from said two properties has been figured at the same price. That for the reasons aforesaid, no segregated pay-rolls of Section 5 and Section 8 are kept and no segregated account of supplies used in mining said two properties are kept by the Presidio Mining Company. That separate and distinct accounts of the number of tons mined and milled from Section 8 are kept, and also separate and distinct accounts of the number of tons of ore mined from Section 5 are likewise kept. That distinct [41] records of the assays of stope samples from Section 8 and from Section 5 are kept. That the ore milled from Section 5 and the ore milled from Section 8 are commingled in the mill and cyanide plant of the Presidio Mining Company. That after the gross amount of bullion for each month has been ascertained, the value of the



ores from said Section 8 and from said Section 5 is then determined by calculation based upon the number of tons milled from Section 8 and Section 5 proportionate to the stope assays and tonnage of the ores from Section 8 and the stope assays and tonnage of the ore from Section 5. That at the end of each month the superintendent reports to the San Francisco office the number of tons of ore milled from Section 8 and the number of tons of ore milled from Section 5 together with the average stope assay value of ore milled from Section 8 and of the ore milled from Section 5, and also the ounces contained in the ore sent to the mill from each mine, according to the tonnage and said stope assays. That all bullion extracted from said mill and cyanide plant is shipped by him from day to day, or immediately after each clean-up, to the Selby Smelting and Lead Company at Selby, California, and that after full return at the end of each month are obtained from said refining company, the calculation is made at the San Francisco office, apportioning the relative amount of bullion obtained from Section 8 and that obtained from Section 5, as based upon the tonnage and stope assays from each of said mines. That at the end of each month the superintendent sends his original report of the matters herein mentioned upon a form known as "Form #15," a copy of which form for the month of November, 1915 is hereto attached, marked Exhibit "A" and made a part of this affidavit, and that such monthly reports constitute a part of the records of the Presidio Mining Company at its San



Francisco office, and a [42] duplicate thereof constitutes the record kept at Shafter, at said mine, and the original of all other records kept at said mine are likewise forwarded by said superintendent to the San Francisco office, to wit, the original payroll for each month, together with all original vouchers for all expenditures made by said superintendent, and that all of such original records are on file in the office of said corporation at San Francisco and now are, and at all times have been open to the inspection of the said plaintiff W. S. Overton, and that the said W. S. Overton has repeatedly examined the same during the last five months, and has taken copies of most of them.

That no other accounts are kept at the mine of said corporation at Shafter, Texas, excepting the memorandum books of the mine foreman or tally keeper, who keeps the talley of the number of tons delivered from each of said properties to the mill, and tally-books kept by such foreman of the number of men employed under his direct supervision and the number of hours worked by each of such men, from which such foreman or shift boss makes periodical reports to the superintendent, and from which tally-books the payroll is constructed and the superintendent's memoranda of the number of tons delivered is computed.

This deponent therefor says that the said plaintiff has had access to all books and records of the Presidio Mining Company relative to its affairs, and denies that said plaintiff has been denied access to important or any records relative to the pro-

duction of ore from Section 5, and this deponent denies that it has been represented to said plaintiff that the records necessary to ascertain the production of ore from Section 5 were in the Company's office in Texas, and further says that there are no records in the office of the corporation at Shafter, Texas from which any other or different information can be obtained [43] than the information contained in the records in the office at the city of San Francisco,

Further deponent says, that said Presidio Mining Company keeps, and ever since the present Board of Directors have been in office, has kept at its office in the city and county of San Francisco, the following books of account, and records:

A ledger, a cash-book and journal, a file of returns for bullion sold, vouchers for every item of cash disbursed, a complete file of bank statements, and a file of superintendent's monthly reports, from all of which any accountant can, without explanation or aid, ascertain the tonnage for any given month, the total bullion sales, the value per ton, the value per ounce, the cost of production, the cost of production per ton, and the cost of production per ounce, and deponent further says that at all times, or for about the five months last past that said plaintiff Overton has been in San Francisco, all of said records and information have been at his disposal and subject to his examination.

That it is true that the officers of the Presidio Mining Company have refused to give said plaintiff an order upon the superintendent at Shafter,

Texas, permitting him to inspect the records there kept by the superintendent, for the reason that no additional information could be obtained by said plaintiff from said records other than that disclosed by the books in the office of the Company in San Francisco, and for the further reason that said officers believed that said plaintiff desired said order only for the purpose of harrassing and annoying said corporation and its superintendent at Shafter, Texas, and that said officers did not wish to needlessly annoy said superintendent by having his time distracted from his usual duties as such superintendent.

That as to the matter contained in said affidavit commencing with the word "deponent" in line 13, page 4, down to [44] and including the word "corporation" in line 13 of page 5, this deponent says that he has no information or belief as to said matters, other than reports made to him in regard to said Osborn by his son, William Osborn, and that from such reports he did believe and may have stated on October 14th, 1915, that the physical condition of said Osborn was serious and that he could not be seen. That this deponent did not say that said Osborn was in a dying condition, but at said time believed and may have stated that said Osborn, to the best of his information and belief, would probably not leave his house again. Deponent further says that he has not seen, and has not directly communicated with said Osborn since the latter part of August, 1915. That as to the statement in said affidavit contained that the said

Osborn has been committed to Agnews, and as to the conditions under which he was so committed, this deponent has no information or belief other than such as has been given to him by said William Osborn, the son of said L. Osborn. That deponent has been informed and believes that said Osborn has been committed to said asylum, but as to the grounds of his commitment and the manner thereof or the purposes thereof, this affiant has no information or belief.

W. S. NOYES.

Subscribed and sworn to before me this 16th day of December, 1915.

[Notarial Seal]

M. A. BRUSIE,

Notary Public in and for the City and County of  
San Francisco, State of California. [45]

**Exhibit "A"**

FORM #15.

Shafter, Texas, December 2d, 1915.

**PRESIDIO—SECTION 5.**

**APPORTIONMENT OF BULLION YIELD.**

For November, 1915.

The ores extracted from the various workings during November were as follows:

Contents per Stope Samples	Stope Samples Ozs.	Tons.
Ozs.	49683.5	2691.0
	53161.5	2135.0

	Tons.	Ozs.
Presidio .....		
Section 5.....	710.0	14.0
Mina Grande.....	532.0	37.3
Stope "13".....	618.0	33.7
Stope 137a.....	203.0	7.9
El Once.....	72.0	14.0
Prospect in 115A Sq. 11-H.....		
North End.....	52135.0	24.9
Gen Av. ....		4826.0
Total .....		
102945.0		

4826.0 21.3 Ozs. avg. all stopes.

E. M. GLEIM, Supt.  
Per A. W. FROLLI.

Due service and receipt of a copy of the within Affidavit is hereby admitted this 16th day of December, 1915.

W. F. ROSE and  
BRUCE GLIDDEN,  
Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 16, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [46]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Plaintiffs,

vs.

PRESIDIO MINING COMPANY et al.,  
Defendants.

**Answer of B. S. Noyes to Supplemental Affidavit  
in Support of Application for Temporary  
Injunction.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

B. S. Noyes, being first duly sworn, on oath deposes and says:

That he is one of the defendants in the above-entitled action and answering the supplemental affidavit of W. S. Overton in support of application



for temporary injunction, this deponent says, as follows:

That deponent is a director and the President of said defendant, Presidio Mining Company, and has been such director and president since the 29th day of January, 1913; that the office hours of said Presidio Mining Company are from 10 A. M. to 3 P. M. and that the Secretary of said corporation is the only person in charge thereof and that he has no assistant; that checks for bullion sold are received on the average of four times per week and it is necessary for said Secretary to leave said office for a short time nearly every day in order to transact the banking business of said corporation and it is the custom of said Secretary to leave said office about 11:45 A. M. to transact such banking business and to take his lunch, after which he returns to said office [47] at about the hour of 1 P. M., that deponent has frequently visited said office since his election as president and up to the present time and has always found said office open for the transaction of business and the Secretary present and in charge thereof; that the said John W. F. Peat is engaged in other business but deponent is informed and believes and upon such information and belief states that the said Peat attends to such other business before 10 A. M. or after 3 P. M.

Deponent admits that in the presence of defendant Wm. S. Noyes and of R. T. Harding, counsel for the defendant, this deponent admitted that a shortage of \$10,689.75 in the funds of said Presidio Mining Company had existed in January, 1913, but

this deponent did not admit that said Wm. S. Noyes used nearly all of the sum of \$11,000, collected by said Wm. S. Noyes from said Presidio Mining Company on the 24th and 28th days of February, 1913, in covering said shortage, but deponent states the facts in that regard to be: That said sum of \$11,000 was deposited in the bank account of said Wm. S. Noyes with his other funds and from his joint funds in the bank, said Wm. S. Noyes lent to said L. Osborn the sum of \$10,689.75, taking the promissory note of said Osborn, which was prepared by this deponent and secured by collateral; to wit, the stock of the said L. Osborn in said Presidio Mining Company.

This deponent admits that said Overton accused said Wm. S. Noyes, on or about the 14th day of October, 1915, of securing said Osborn's stock for compounding a felony and this deponent states that the said accusation made by said Overton was and is false, malicious and scandalous and in this connection this deponent states that to his personal knowledge said Wm. S. Noyes had owned the stock in question for many years prior to the 12th [48] day of December, 1912, and long prior to the discovery of said shortage.

As to the averment in said affidavit that this deponent answered in substance "You could not expect anyone to give another \$10,000 for nothing," this deponent denies that he did so answer in substance or make any answer whatsoever resembling the said statement but admits that this deponent

did say "you could not expect any man to lend another \$10,000 without taking security if he could get it" or words of similar import.

This deponent further states that said defendants, meaning thereby Wm. S. Noyes and this deponent, admitted that said Osborn was retained as Secretary of said company for more than two and a half years after the discovery of said shortage but denies that said shortage was concealed by said W. S. Noyes; and in this connection deponent states that the facts are as follows: That on or about the 19th day of January, 1913, this deponent discovered that the funds of said Presidio Mining Company were short; that deponent forthwith telegraphed this information in cipher to said W. S. Noyes at Marfa, Texas, and forthwith called upon Mrs. India Scott Willis and Miss L. M. Doherty, both of whom were large stockholders in said Presidio Mining Company, and informed them of his discovery; that both said last-named persons were much distressed at the information so given them by deponent and alarm for the probable effect of said shortage or its public disclosure on the company and its future welfare; that both said last-named persons expressed themselves as extremely desirous of avoiding any public disclosure of said shortage out of consideration for the welfare of the company and to spare Osborn and his family from humiliation; that because of the fact that W. S. Noyes was at the time in Texas making arrangements [49] for the installation of a cyanide plant and other improvements upon the company's pro-

perty, a financial crisis existed in the company's affairs and an immediate decision had to be made as to what course should be pursued; that within a few days thereafter, said W. S. Noyes returned to San Francisco and conferred again with said India Scott Willis, L. M. Doherty and this deponent, and it was then and there agreed, at the urgent desire of said India Scott Willis, that no disclosure of said shortage should be made and the said W. S. Noyes volunteered to furnish the necessary money and lend the same to said Osborn in order that said shortage should be made good.

This deponent denies that at any time he has destroyed any correspondence passing between himself and E. M. Gleim, the superintendent of said Presidio Mining Company, that related to the business of said corporation.

That as to the statements of said affidavit contained on page 4, line 18 to line 13 page 5 thereof, this deponent has no knowledge of the facts therein stated in regard to the filing of a petition in the Superior Court of the City and County of San Francisco for the commitment of said L. Osborn, the issuance of the said order of arrest and the order of commitment of said Osborn to the State Hospital at Agnews, nor the purpose of said commitment, and in this connection this deponent states that he has not seen or communicated with said Osborn since the month of August, 1915, excepting to inquire occasionally from William Osborn, the son of said L. Osborn about the state of his father's health.

This deponent denies on information and belief that the minutes of the meeting of the Board of Directors of said Presidio Mining Company, held on January 29th, 1913, and found on [50] pages 28 and 30 of the Minute-book of said company, are false in the particulars stated in the affidavit of said Overton, or at all, and in this regard, deponent states the following facts: That prior to the 29th day of January, 1913, it had been determined and agreed by the said India Scott Willis, L. M. Doherty and Wm. S. Noyes, that this deponent should be elected to the presidency of said company; that in order to accomplish that result, this deponent directed the said L. Osborn, Secretary of the said corporation, to transfer into the name of this deponent, a certificate of ten shares of the capital stock of said corporation, standing in the name of Charles H. Fish, which said certificate was then in the possession of said Osborn and endorsed in blank by the said Fish; that on said 28th day of January, this deponent prepared a typewritten draft of the minutes for said meeting of January 29th in the precise words and figures as the same now appear upon said minutes, and directed the said Osborn to call a meeting of the Board of Directors of said company for January 29th, and to take the proceedings and pass the resolutions set forth in said typewritten draft in the precise words and in the same order in which the same appeared in said draft; that deponent was not present at said meeting but after the same was



held the said minute-book was delivered to him for inspection with said minutes written therein in their present form and this deponent believed and still believes that all the proceedings therein set forth were duly and regularly had and taken; that deponent further says that if the contention of said Overton in regard to the irregularity of the proceedings of the Board of Directors at this meeting on January 29th and the meeting on January 31st, 1913, is correct, nevertheless, said irregularity was fully cured by the subsequent election of the identical Board of Directors installed at the said meetings at the [51] stockholders meeting of the Presidio Mining Company held on the 6th day of October, 1913, and by the subsequent proceedings had and taken by said Board of Directors, so duly and legally elected at their meeting held on the 19th day of November, 1913, at which said meeting all financial transactions between the defendant W. S. Noyes and the said Presidio Mining Company were ratified, adjusted and confirmed by the agreement authorized at said meeting and duly made between the said W. S. Noyes and the Presidio Mining Company, which said agreement is dated the 19th day of November, 1913, and is attached to the amended Bill of Complaint herein on file as Exhibit "C."

As to statements of said affidavit beginning at line 28, page 6 and ending line 16 page 8 thereof, this deponent says: that said matters therein contained are fully answered and set forth in the affidavit of W. S. Noyes, filed herewith; that this deponent has read the said affidavit and hereby adopts same



for the purpose of answering said portion of said plaintiff's affidavit.

Deponent says it is true that Wm. S. Noyes has been paid by the Presidio Mining Company, the sum of \$3650 on November 15th, 1915, and the further sum of \$2556.60 on or about the 1st of December, 1915, and states that said sums were rightfully due to said Wm. S. Noyes for ore delivered under the provisions of the said contract between the said Noyes and the Presidio Mining Company, dated November 19th, 1913.

The deponent further states that no sums whatsoever will be paid to the said W. S. Noyes by the Presidio Mining Company except such as are or may become due the said W. S. Noyes under and by virtue of said contract or such sums as may rightfully become due to him as salary from the said Presidio Mining Company. [52]

Referring to the statements contained in said affidavit of W. S. Overton that the defendants and particularly the said W. S. Noyes will continue to draw large sums of money from the Company's treasury to the detriment and injury of the plaintiff and other minority stockholders of said company, this deponent says: That no moneys have been or will be paid to the said W. S. Noyes to the detriment or injury of the plaintiff or the minority stockholders and further states that for every dollar which has heretofore been paid to the said W. S. Noyes on account of ore purchases, one dollar of net profits from ores so purchased from the said W. S. Noyes has gone into the treasury of the said Presidio Mining Com-

pany to the great benefit and advantage of each and all of the stockholders of the said Presidio Mining Company and in this regard, deponent states, that the said contract with the said W. S. Noyes has been of great value to the said Presidio Mining Company and that up to the first day of November, 1915, said Presidio Mining Company has made a net profit out of the said contract amounting to \$105,398.80; that said plaintiff is well aware of said fact but in all of his pleadings in this suit and in all the affidavits filed therein, has carefully concealed said fact from this court.

And further deponent saith not.

(Signed) B. S. NOYES.

Subscribed and sworn to before me this 16th day  
of December, 1915.

[Notarial Seal]

FLORA HALL,

Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed Dec. 16, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk.

Due service and receipt of a copy of the within  
affidavit is hereby admitted this 16th day of Decem-  
ber, 1915.

WM. F. ROSE and  
BRUCE GLIDDEN,  
Attorneys for Plff. [53]

At a stated term, to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom, in the city and county of San Francisco, on Tuesday, the 28th day of December, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 196—EQUITY.

W. S. OVERTON et al.

vs.

PRESIDIO MINING CO. et al.

**(Order Denying Application for the Appointment of Receiver, Without Prejudice, etc.)**

Defendants' motion to dismiss the amended bill of complaint and motion to strike out parts of the amended bill of complaint and plaintiffs' application for the appointment of a receiver and application for a preliminary injunction, heretofore heard and submitted, being now fully considered and the Court having rendered its oral opinion, it is ordered that said motion to dismiss and said motion to strike out be and the same are hereby denied; that said application for the appointment of a Receiver be and the same is hereby denied, without prejudice; and that said application for a preliminary injunction be and the same is hereby granted; a formal order for said injunction to be submitted to the Judge for signature and filed. [54]

In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYÉS, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Motion to Produce Documents and for Order of  
Inspection.**

Now come the complainants above named in the  
above-entitled suit, and move the Court for an order  
that the defendants above named produce for the  
inspection and examination by complainants herein  
the following documents, and allow complainants to  
make copies thereof, to wit:

1. All original letters written by complainant W.  
S. Overton and other stockholders from time to time  
since 1908 to date hereof to the officers of the Pre-  
sidio Mining Company.

2. All letters and telegrams from E. M. Gleim  
sent from Shafter, Texas, or Marfa, Texas, to Wm.  
S. Noyes or other officials of Presidio Mining Com-  
pany, and copies of all telegrams and letters sent  
by Wm. S. Noyes or other officers of Presidio Min-

ing Company to E. M. Gleim, since on or about March 24, 1915, to date hereof, relative to any and all matters pertaining to requests for information by W. S. Overton as to the affairs of the Presidio Mining Company, either in San Francisco or Shafter, Texas, or in any way connected with or relating to any and all matters pertaining to the prosecution of this suit since its commencement to date hereof, or pertaining in any way to the visits of W. S. Overton to said mine in Shafter, Texas, or otherwise relative to said W. S. Overton, one of the complainants [55] in this suit, and all instructions given by W. S. Noyes to E. M. Gleim relative to the production of ores produced from either Section 5 or Section 8, or the tabulations derived from assay sheets or superintendent's tally sheets, or instructions given relative to assay sheets, made at said mine in Shafter, Texas.

3. Copies or originals of all letters and correspondence and messages of every kind and nature between W. S. Noyes and the officials of the Presidio Mining Company from November, 1912, to date hereof, relative to the purchase and acquirement of Section 5.

4. Copies of all United States Internal Revenue reports and United States income tax statements and returns relative to the financial affairs and earnings of Presidio Mining Company since 1911.

5. For an order granting to the complainants in this suit, or either of them, or to any agent for and on behalf of said complainants, or either of them, permission to inspect and have access to,



make copies of, all books, records, documents and files of every kind and nature belonging to the said Presidio Mining Company or pertaining to its affairs, either in the office of said corporation in San Francisco or at the office of said corporation at Shafter, Texas, or elsewhere, either within or without the State of California, or pertaining to any matters connected with Section 5, either directly or indirectly.

6. For an order from this Honorable Court directed to the officers of the Presidio Mining Company, Wm. S. Noyes, the Thiel Detective Agency at El Paso, Texas, the officers, agents, servants and employees of either or any of the foregoing mentioned in this paragraph, granting to and permitting the complainants, [56] or either of them, or their agents, servants or employees, to inspect and take copies of all Thiel or other detective agency reports in the office of the Presidio Mining Company in San Francisco or Shafter, Texas, or in the office of Wm. S. Noyes, or in the office of Thiel Detective Agency in El Paso, Texas, or any office of Thiel Detective Agency, or any other detective agency, or elsewhere, for the period from November, 1912, to date hereof, and pertaining to the Presidio Mining Company affairs, and any employee or officer thereof, or any stockholder, past or present, of said Presidio Mining Company.

This motion will be based upon notice, upon the affidavit of W. S. Overton, and upon all the records and files in this case, and upon such oral and documentary proof as may be required.



Dated January 24, 1916.

WM. F. ROSE,  
Solicitor for Complainants.  
WM. F. ROSE and  
BRUCE GLIDDEN,  
CHARLES CLYDE SPICER,  
Of Counsel.

[Endorsed]: Filed Jan. 25, 1916. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [57]

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In the District Court of the United States, in and  
for the Northern District of California,  
Second Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,  
vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,  
Defendants.

**Affidavit of W. S. Overton in Support of Motion.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

W. S. Overton, being first duly sworn, on oath  
deposes and says: That he is one of the complain-  
ants in the above-entitled suit, and has at all times

mentioned in the original and amended bills of complaint been a stockholder, and still is a stockholder of the Presidio Mining Company; that since the commencement of this suit deponent has made demand upon the Secretary of said Presidio Mining Company, in its San Francisco office, to produce the complete files of correspondence containing his own and other stockholders' letters written to the San Francisco offices of the Presidio Mining Company from time to time since on or about the year 1906, and has likewise demanded that said Secretary produce the replies to said letters written by said San Francisco officers of said company; that the officials of said Presidio Mining Company have produced a portion of said correspondence, but not all. [58]

That on or about the 5th day of November, 1915, deponent went to Presidio County, Texas, solely to examine the books, records, documents and papers of said Presidio Mining Company kept at its mine office in said county and state, and applied to E. M. Gleim, superintendent of said corporation, for permission to examine the same; that said E. M. Gleim refused to allow deponent to examine any of the books, records, documents, or papers of said company, and informed deponent that, acting under orders from B. S. Noyes, President of said company, he absolutely refused to allow this deponent to examine any of the same; that the said office in Texas disburses large sums of money, aggregating from fifteen to twenty thousand dollars monthly.

That certain of the defendants above named, and

particularly Wm. S. Noyes and B. S. Noyes, have originals and copies of correspondence and communications had between themselves and certain of the stockholders of the Presidio Mining Company, covering a period from November, 1912, to February 1, 1913, relative to and connected with the purchase of Section 5; that no copies thereof or originals are to be found in the San Francisco office of said Presidio Mining Company; that defendant Wm. S. Noyes, and also B. S. Noyes, carry on a general correspondence with E. M. Gleim, the superintendent of the mine at Shafter, Texas, much of which pertains to the company's affairs, and some pertains to the relations of deponent in his efforts to obtain access to the books and records of this corporation both in the San Francisco office and in the Texas office of said company; that this deponent at all times since on or about November 5, 1915, has been refused access to all books and records of said company in the Texas office, and has also been refused access to and has not been permitted to see practically any of the correspondence passing [59] between E. M. Gleim and the San Francisco officers of said Presidio Mining Company other than about routine matters.

That on or about November 4, 1915, deponent went to the office of the Thiel Detective Agency in El Paso, Texas, and was informed that copies of reports made for the Presidio Mining Company were on file in said office; that the official then in charge of said office informed deponent that they had all the copies of the said detective reports made for said Presidio Mining Company, but could not

permit inspection by deponent without authority from the proper officers of the Presidio Mining Company, or a proper Court order; this deponent has on numerous occasions requested the officers of Presidio Mining Company for authority to inspect the Thiel Detective Agency reports, and has demanded of said officials, particularly the President, B. S. Noyes, for copies of Thiel and other detective agency reports relative to the Presidio Mining Company and its affairs and the officers and employees of said company, and for which said corporation has paid over six thousand dollars; that deponent has at all times been refused permission to see or inspect any of said reports.

That deponent has requested the officers of said Presidio Mining Company to furnish him copies of the United States Internal Revenue reports and income tax returns; that no copies thereof are on file in said company's office in San Francisco; that deponent has unsuccessfully tried for a period of more than five months last past to obtain from the officers of this corporation, and particularly from B. S. Noyes, President, copies of the income tax returns of said Presidio Mining Company.

That the production of all letters, documents, books and papers of said Presidio Mining Company, both in San Francisco and in Shafter, Texas, and elsewhere, whether in or out of the [60] office of said Presidio Mining Company, is necessary in order that this deponent may effect a thorough and systematic inspection thereof; that deponent at all times since the commencement of this suit has with-

out success requested the officers of said Presidio Mining Company to be permitted fully to inspect all documents, books, files and records in their possession or under their control, both in San Francisco and in Texas; that all of said books, papers, documents and records are necessary and material evidence in complainants' suit; that all of said facts are known to the defendants above named.

And further deponent sayeth not.

W. S. OVERTON.

Subscribed and sworn to before me this 25th day of January, A. D. 1916.

[Seal]

W. H. PYBURN,

Notary Public in and for the City and County of San Francisco, State of California.

Due service and receipt of a copy of the within affidavit is hereby admitted this 25th day of January, 1916.

R. T. HARDING,

HENRY E. MONROE,

Solicitors for Defendants.

[Endorsed]: Filed Jan. 25, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [61]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 196.—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Order to Produce and Allow Inspection of  
Documents.**

The motion of complainants for an order to allow inspection having been argued and submitted on *February 31, 1916*, IT IS HEREBY ORDERED:

That the officers, agents and employees of Presidio Mining Company permit W. S. Overton and one accountant, during reasonable business hours to inspect or make copies of any and all books, records, correspondence, telegrams, documents and files of the Presidio Mining Company, at its offices, either in San Francisco, California, or Shafter, Texas, pertaining either to the business of Section Eight or Section Five, and whether connected directly or indirectly with either of said Sections;

To allow inspection by said W. S. Overton of any and all correspondence between November 1, 1912, and March 1, 1913, and had by and between Wm. S.



Noyes and other stockholders of Presidio Mining Company relative to the purchase of Section Five; also all correspondence and telegrams passing between the officers of said Presidio Mining Company in San Francisco and E. M. Gleim in Shafter, Texas, relative to the production of [62] ores from Section Five and Section Eight;

That the President of said Presidio Mining Company procure forthwith, or furnish forthwith to said W. S. Overton an authorization to procure, from the proper United States Internal Revenue officers copies of the internal revenue reports and income tax returns as made by the Presidio Mining Company, for the year 1911, and the succeeding years to date hereof; such reports to be placed on file in the office of the company at San Francisco;

That the President and General Manager of said Presidio Mining Company furnish forthwith to W. S. Overton an authorization directed to the Thiel Detective Agency of El Paso, Texas, or any other detective agency, directing and authorizing said Thiel or other detective agency to allow said W. S. Overton, or his attorney, to examine any and all detective reports made by said Thiel or other detective agency since November, 1912, to date hereof, relative to the business of the Presidio Mining Company or any of its officers, agents, or employees, and paid for by said corporation.

Done in open Court this 11th day of February, 1916.

[Seal]

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Feb. 11, 1916. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [63]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Motion for Injunction Pendente Lite.**

To the Honorable, the Judge of the District Court  
of the United States, in and for the Northern  
District of California, Second Division:

Now comes W. S. Overton and Carl A. Martin,  
complainants in the above-entitled suit, by Wm. F.  
Rose, one of complainants solicitors, and move  
the Honorable Court to grant a writ of injunction  
against the defendants, and each of them, their  
agents, attorneys, clerks, servants and employees,  
restraining and prohibiting said defendants, or  
either or any one of them, and any officer of  
Presidio Mining Company, from transferring all  
or any of the shares of stock standing in the names

of defendants, or transferees of defendants, on the books of the Presidio Mining Company heretofore and now held in a voting trust, aggregating 87,883½ shares, and also including any and all shares of the capital stock of the Presidio Mining Company held by defendants at the time of the trial of this suit in March, 1916, whether in the names of defendants directly or held by other parties for or on behalf of them, or each or any one of them; that all transfers of stock by defendants or any one of them, since the submission of this suit on August 29, 1916, be set aside; and that [64] said defendants, and any and all transferees of stock from defendants transferred since the trial of this suit in March, 1916, be forthwith compelled to deliver to the Clerk of this Honorable Court all the shares of stock of said defendants and their transferees, including said 87,883½ shares held in said voting trust, subject to the order of and pending final judgment of this Honorable Court, and conformable to the prayer of the amended and supplemental bills of complaint filed in this suit, and based on this motion and notice thereof, and on said amended and supplemental bills, the affidavit of W. S. Overton of even date herewith, and also on all records, files and pleadings in this suit, and on all the oral and documentary evidence heretofore submitted herein.

Dated October 26, 1916.

WM. F. ROSE,

Solicitor for Complainants.

CHARLES CLYDE SPICER,

Of Counsel.

[Endorsed]: Filed Oct. 27, 1916. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [65]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Affidavit for Injunction.**

United States of America,  
Northern District of California,  
City and County of San Francisco,—ss.

W. S. Overton, being first duly sworn, on oath,  
deposes and says: That he is one of the complain-  
ants in the above-entitled suit. That during the  
trial of this case in March, 1916, defendants in this  
suit admitted that a voting trust existed to run  
to July 7, 1919. That the stock in said voting  
trust aggregates 87,883½ shares, as follows:

L. M. Doherty.....	31956— $\frac{2}{3}$ shares
L. Osborn .....	25000      "
B. S. Noyes.....	10926— $\frac{5}{6}$ "
Wm. S. Noyes.....	20000      "

That in addition to said 87,883 $\frac{1}{2}$  shares, Wm. S. Noyes held an aggregate of 10,000 shares. That said Wm. S. Noyes immediately prior to the trial of this case purchased 6928 $\frac{2}{5}$  shares of the capital stock of the Presidio Mining Company. That the total number of shares held in said voting trust and by Wm. S. Noyes aggregated 104,811  $\frac{9}{10}$  shares at the subsequent hearing of this case to wit, August 29, 1916. That a copy of said voting trust is attached hereto, marked Exhibit "A," and here referred to. That immediately after the argument and [66] submission of this case on August 29, 1916, and, to wit, on September 6, 1916, Messrs. Klink, Bean & Co., the expert accountants, notified counsel for complainants and defendants of further irregularities in the books of this corporation. That subsequently, and on September 14, 1916, Messrs. Klink, Bean & Co. further referred to certain items of apparent irregularities on the books of this company. That copies of said letters are attached hereto marked Exhibit "B." That on October 2, 1916, a meeting of the stockholders of the Presidio Mining Company was held, and affiant by cumulative voting was made a director of the Presidio Mining Company. That at said meeting Messrs. Klink, Bean & Co. were authorized to investigate the books of this corporation relative to alleged irregularities, and sent to the office of the corporation two copies of a letter dated October 14, 1916, relative to the investigation made by them of the company books. That the said copies of letters were taken by B. S. Noyes, the



President of this company, and withheld from affiant and from the company's files in the office. That on October 21, 1916, affiant was informed by the Secretary of the company, John W. F. Peat, that said report had been made and removed by B. S. Noyes. That affiant immediately demanded that said letters be filed, which was subsequently done. That a copy of said report of Klink, Bean & Co. is attached hereto marked Exhibit "C." That B. S. Noyes, President of this corporation, has testified during the trial of this suit in this court that he himself had checked all of the existing books of this corporation, and that the said books were correct. Said B. S. Noyes also testified that the books of this company had been audited by Stewart, Casey & Gibon, and a verbal report rendered to him. That it appears from said report of Klink, Bean & Co. that other shortages, aggregating over \$2500.00, [67] in addition to \$10,689.-75 existed in the company's funds, and that the same appears on the books of this corporation. That affiant believes and so avers, that B. S. Noyes has at all times immediately prior to and since the trial of this suit been aware of the said irregularities, evidenced by the Klink, Bean & Co. letter of October 14, 1916.

That on October 21, 1916, Wm. S. Noyes and B. S. Noyes contrary to the terms of the said voting agreement, transferred the stock held pursuant to said voting trust aggregating 87883½ shares as follows:



Cert. 130, 20,000 shares, to Wm. S. Noyes.

Cert. 131, 25,000 shares, to Wm. S. Noyes,  
pledgee of L. Osborn.

Cert. 132, 31,956- $\frac{2}{3}$  shares, to L. M. Doherty.

Cert. 133, 10,926- $\frac{5}{6}$  shares, to B. S. Noyes.

That said transfers were made contrary to the terms of said voting trust, and without the consent and contrary to the wishes of L. M. Doherty. That the 25,000 shares of stock attempted to be transferred to Wm. S. Noyes represents the stock claimed by Wm. S. Noyes to have been pledged to himself by L. Osborn as collateral security for an alleged and purported loan of \$10,689.75 as testified to during the trial of this action. That the said alleged loan by Wm. S. Noyes to Osborn was the greater part of the sum of \$11,000 ordered paid forthwith pursuant to the so-called \$45,000 bonus resolution. That said \$11,000 is admitted to have been voted for the express purpose of providing funds with which to conceal the Osborn shortage. That affiant believes and avers that the said Wm. S. Noyes has, as is herein set forth, transferred the said 25,000 shares of stock to himself as pledgee for the express purpose and with the intent of using the said stock to transfer to innocent third purchasers or to his friends to prevent any recovery of the said shares of stock and to permit his domination of the affairs of said Presidio Mining Company. [68] That on October 25, 1916, Wm. S. Noyes, with the assistance of B. S. Noyes as President and John W. F. Peat as Secretary, cancelled the said purported transfer of 20,000 shares, Cer-

tificate No. 130, and issued five certificates of 1,000 shares each, numbered 134 to 138 respectively, and transferred 1,000 of said shares, represented by Certificate No. 134, to one Frank M. Parcells. That in addition to said five certificates of 1,000 shares each, said Wm. S. Noyes transferred to himself Certificate No. 139 for 15,000 shares. That affiant believes and avers that the said Wm. S. Noyes and B. S. Noyes transferred said shares of stock for the express purpose of permitting the sale and delivery of said shares from time to time to innocent third purchasers for value, for the express purpose of defeating any of the orders and decrees of this Court to compel restitution by L. Osborn and said Wm. S. Noyes and B. S. Noyes and prevent the recovery of said stock by the Presidio Mining Company in liquidation of any judgment which it might obtain against the defendants, or either or any one of them. That unless restrained, affiant believes and so avers, that the defendants Wm. S. Noyes and B. S. Noyes will continue to transfer the said stock as they have commenced to do, to defeat the ends of justice and cause irreparable injury to the Presidio Mining Company and the complainants in this action, and prevent the enforcement of any claims which said corporation may have against said respective parties, particularly against L. Osborn, should the said stock be continued to be transferred by the said Wm. S. Noyes to other parties or to innocent third purchasers for value. That affiant has accused the said Wm. S. Noyes of wrongfully secur-

ing for his own purposes the stock of L. Osborn, to wit, including 28,607 shares in December, 1912, and 25,000 in February, 1913, in addition to other shares transferred to B. S. Noyes, the brother of [69] Wm. S. Noyes. Attached hereto is a photostat copy of a portion of page 6 of the stock journal of the Presidio Mining Company showing the signatures of Wm. S. Noyes, B. S. Noyes and Frank M. Parcells on the books of this company, and evidencing recent attempted transfers of stock in October, 1916.

That affiant believes and so avers, that the said Wm. S. Noyes and B. S. Noyes, unless restrained from so doing, will attempt to control this corporation in the future in spite of any Court orders, decrees or judgments which might be made and rendered by this Court, by acting through transferees to whom said stock above mentioned may be transferred, and defy any orders of Court or evade any judgment which may be rendered against them or L. Osborn in this action. That the said Wm. S. Noyes did, two days after the commencement of this suit, to wit, on or about July 28, 1915, record a deed from himself to his wife on the property and home in which he now and for a number of years last past has resided in the city of Oakland. That affiant at all times has heretofore believed that the said Wm. S. Noyes and B. S. Noyes were responsible and able to respond on execution to any judgment which might be rendered against them, for the sole reason that the said stock of Wm. S. Noyes and B. S. Noyes was largely held

in this voting trust, represented by certificate 104. That if said defendants Wm. S. Noyes and B. S. Noyes and L. Osborn are permitted to transfer said stock now or in the future, and until the final judgment of the Court in this suit, that no judgment can be enforced against the said stock to satisfy any claims of the Presidio Mining Company against said last-named defendants. That in the opening brief heretofore filed by affiant's counsel on behalf of complainants, said counsel as a part of the proposed remedies in the suit has requested that the stock of the defendants [70] be deposited with the Clerk of this Honorable Court pending any final judgment which may be rendered herein. That unless an injunction issue, and said defendants be restrained from in any way transferring or attempting to transfer their said stock held in said voting trust or otherwise, and that said stock be sequestered pending the final judgment of this Court, that irreparable damage and injury will result to the Presidio Mining Company and the enforcement of any judgment so far as its satisfaction from the levy on any of said stock is concerned, will be defeated. Affiant believes and avers, that the said defendants, particularly Wm. S. Noyes and B. S. Noyes have, without the consent of L. M. Doherty and contrary to the provisions of said voting trust, willfully transferred and are preparing to further transfer the said shares of stock in the said voting trust and otherwise, for the express purpose of defeating any order and

judgment which may be rendered in this action.  
And further affiant sayeth not.

W. S. OVERTON.

Subscribed and sworn to before me this 26th day  
of October, 1916.

[Seal]

L. H. ANDERSON,

Notary Public in and for the City and County of  
San Francisco, State of California. [71]

**Exhibit "A."**

WHEREAS, WILLIAM S. NOYES is the owner of 20,000 shares, standing in his name, of the capital stock of PRESIDIO MINING COMPANY, a corporation organized and existing under the laws of the State of California; L. M. DOHERTY is the owner of 31,956-2/3 shares of said stock standing in her name; L. OSBORN is the owner of 25000 shares of stock standing in his name; and B. S. NOYES is the owner of 10,926-5/6 shares of said stock standing in his name, and

WHEREAS it is deemed to be for the best interest of the parties above-named and of said corporation, that there should be no change in the control thereof or in the management of said company's business for the period of five (5) years,

IT IS THEREFORE AGREED by and between the above-named parties as follows:

That all of said stock shall be, and the same is hereby, sold, assigned, transferred and set over unto WILLIAM S. NOYES and L. M. DOHERTY



as trustees, to hold upon the following trusts, to wit:

I. To vote upon said stock at all stockholders' meetings, whether regular or called, of said corporation, for the period of five (5) years from and after the date hereof. The votes of said stock and all thereof, shall be cast by the said two trustees, but if either of them shall be absent from any meeting, said votes may be cast by the other trustee.

II. To collect and receive, for said period of five (5) years any and all dividends that may be declared by said corporation upon said stock and all thereof, and to distribute such dividends among the parties hereto in proportion to their respective interests.

III. At the expiration of five (5) years from the date hereof to transfer said stock to the names of the respective parties hereto in the amounts to which each is entitled and to distribute said stock in those proportions, among the parties hereto and to close this trust.

IT IS AGREED that sales of said stock by the respective parties hereto, may be made, subject to the exercise of the voting power as herein provided.

IT IS FURTHER AGREED, that in the event of the death of any of the parties hereto, the stock of such deceased party shall pass to his heirs or personal representatives subject to provisions hereof.



IT IS FURTHER AGREED that this agreement may be dissolved at any time by the unanimous consent of all the parties hereto.

Executed this seventh day of July, 1914.

(Signed) L. M. DOHERTY.

(Signed) L. OSBORN.

(Signed) WM. S. NOYES.

(Signed) B. S. NOYES.

I hereby consent to the execution of the foregoing agreement by L. M. Doherty.

(Signed) INDIA SCOTT WILLIS. [72]

San Francisco, Cal., Sept. 30th, 1914.

This is to certify that there are 1956-2/3 shares of the capital stock of the Presidio Mining Company standing in names of William S. Noyes and L. M. Doherty as Trustees upon the books of said company under the provisions of a certain voting trust dated July 7th, 1914.

Further that L. M. Doherty is the equitable owner of said 1956-2/3 shares of stock and the undersigned agree to transfer so many shares of said stock and deliver the same to said Doherty at the expiration of the term mentioned in said voting trust agreement, to wit: the 7th day of July 1919 or at such earlier date as said voting trust agreement may be terminated by the unanimous consent of all the parties hereto.

Signed—WM. S. NOYES,

Trustee.

L. M. DOHERTY,

Trustee.

San Francisco, Cal., Sept. 30th, 1914.

This is to certify that there are 30,000 shares of the capital stock of the Presidio Mining Company standing in names of William S. Noyes and L. M. Doherty as Trustees upon the books of said company under the provisions of a certain voting trust dated July 7th, 1914.

Further, that L. M. Doherty is the equitable owner of said 30,000 shares of stock and the undersigned agree to transfer so many shares of said stock and deliver the same to said Doherty at the expiration of the term mentioned in said voting trust agreement, to wit: the 7th day of July 1919 or at such earlier date as said voting trust agreement may be terminated by the unanimous consent of all the parties hereto.

Signed—WM. S. NOYES,

Trustee.

L. M. DOHERTY.

Trustee. [73]

### **Exhibit "B"**

San Francisco, September 6, 1916.

Mr. R. F. Harding and Mr. W. F. Rose,

San Francisco, California.

Re Presidio Mining Company.

Gentlemen:

In the course of our examination of the accounts and records of the above named company at their San Francisco Office our attention was attracted to several entries which appear to be irregular.

As the above matters did not properly come with-

in the stipulated limits of our investigation, we did not pursue them to a final conclusion, yet we regard them as of sufficient importance to be brought to your attention and will present further details if called upon to do so.

We merely state here that the entries referred to are not any part of the so-called "Admitted Shortage of \$10,689.75."

Yours truly,  
KLINK, BEAN & COMPANY,  
By G. A. KLINK.

San Francisco, September 14, 1916.

Mr. R. F. Harding and Mr. W. F. Rose,  
San Francisco, Cal.

Re Presidio Mining Company.

Gentlemen:

Pursuant to the telephone conversation of yesterday between Mr. Harding and our Mr. Cooper, we herewith submit a memorandum of the particular items which we had in mind when we called attention to entries which seemed to be irregular.

On page 10, Journal #1, October 11, 1906, there is an entry charging Profit and Loss and crediting draft account with \$1,800. The footing on the credit side of draft account in the ledger folio 86, is \$900.00 in excess of the correct amount. The charge to profit and loss is interlined between the entries of May 30th and June 22nd, 1906.

On page 15, Cash Book, March 2, 1914, the following entries appear on the credit side:

Payment of .....	\$290.15
Check presumably to cover reads..	90.15
Payment of .....	270.00
Check to cover could not be found.	

We did not go far enough into these matters to come to a final conclusion and think further investigation would be necessary before making a positive statement.

Yours truly,  
 KLINK, BEAN & COMPANY,  
 By G. A. KLINK. [74]

**Exhibit "C."**

San Francisco, October 14, 1916.

To the Board of Directors,  
 Presidio Mining Company,  
 San Francisco, California.

Gentlemen:

Pursuant to instructions we have investigated the following items:

- 1—Charge to Profit and Loss—Credit to  
     Drafts Account, October 11, 1906...\$1,800.00
- 2—Cash Book entries March 2, 1914 of  
     \$290.15 and \$270.00.
- 1—A summary of drafts drawn as re-  
     ported by the Superintendent from  
     April, 1906 to August, 1913  
     amounts to .....\$40,994.31
- Total credits to Drafts account.. 43,694.31

Difference. ....	2,700.00
------------------	----------

On April 10, 1913, (Journal entries pages 97 and 101) there are two entries of \$450.00 each for General Manager's salary for April credited to drafts account; neither appears in the Superintendent's report. One at least is an over-credit to drafts account, the other may be in order.

Allowing one draft as a credit of	450.00
-----------------------------------	--------

Leaves a net difference in Drafts	
-----------------------------------	--

account of .....	\$2,250.00
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As all the charges to Drafts account were from cash-book entries, it would appear that, as far as this particular account is concerned, there were payments made in excess of drafts drawn, amounting to . \$2,250.00

Examining into individual transactions we find the following:

Cash Book Entry April 7, 1906.

Drafts — paid Superintendent's drafts No. 294.....	\$450.00
--	----------

and No. 295.....	\$450.00
------------------	----------

	900.00
--	--------

Check No. 2211 for \$450.00 drawn in favor of Mr. W. S. Noyes, is on file in the County Clerk's Office, but check No. 2210 was not on file and could not be located.

Cash Book entry March 9, 1909:

Drafts Account—Paid Superintendent's Draft No. 324.....	450.00
Check No. 248 not on file.	
September 30, 1910—Check No. 74, favor W. S. Noyes for.....	450.00
not on file.	
January 3, 1911—Charge to Draft account through Cash Book.....	450.00
No stub in check-book of check to cover.	

We did not pursue the examination of the Draft account any further.

2—These items together amount to \$560,-15, and are said to cover traveling expenses of Mr. W. S. Noyes. If this is so, we have no further comment to make on the subject other than that the [75] voucher covering the disbursement could not be located in the files.

During our examination other items of a doubtful nature were noticed particularly with regard to charges for Secretary's salary. During the year September 1, 1908, to August 31, 1909, fourteen months' salary was charged by Cash Book entries and during the year September, 1909, to August 31, 1910, thirteen months' salary was charged.



Total overcharge to salary—3  
months at \$300.00..... 900.00

CHECKS MISSING FROM FILES:

It was noticed that the following  
checks were not on file:

No. 243—February 11, 1909, favor

Chas. Kerrigan..... 542.50

No. 28—April 28, 1910, favor Ex-  
change—San Antonio National Bank 10,002.50

CHECKS NOT ENTERED:

Certified Check No. 14—March 4,  
1910, favor Chas. Kerrigan..... 6,000.00

The above three items were not in-  
vestigated further.

Charged to Profit and Loss

October, 1913 Credited to Supense 470.00

Mr. W. S. Noyes explains that in order to build  
the aerial tramway, it was necessary to get pos-  
session of a strip of land which was school property  
and could not be owned by a corporation. This  
strip was purchased by an outsider and afterwards  
transferred to Noyes, in whose name it is at present.

He is now taking the matter up with an attorney  
to see if it can legally or safely be transferred to  
the Company. The price paid was \$470 which was  
charged to Supense and afterward closed into  
Profit and Loss.

Yours very truly,

KLINK, BEAN & COMPANY,

By G. T. KLINK [76]

1	Wm. S. Noyes and L. M. Doherty, Trustees,	24	104	87.883 $\frac{1}{2}$	W. S. Noyes,	Wm. S. Noyes	19	130	20000	Wm. S. Noyes
						W. S. Noyes				
					Wm. S. Noyes	pledgee of L. Osborn.	19	131	25000	
					pledgee of L. Osborn,					
					L. M. Doherty		7	132	31956 $\frac{2}{3}$	
					B. S. Noyes		19	133	10926 $\frac{5}{6}$	B. S. Noyes
25	Wm. S. Noyes	19	130	20,000.	Wm. S. N.	Frank M.				
					Parcells		11	134.	1000	F. M. Parcells
					Wm. S. Noyes		19	135.	1000	
					"	"	19	136.	1000	
					"	"	19	137.	1000	
					"	"	19	138.	1000	
					"	"	19	139.	15000	19000

In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Undertaking on Order to Show Cause and Tempo-  
rary Restraining Order.**

KNOW ALL MEN BY THESE PRESENTS:  
Whereas, an order has been made in the above-enti-  
tled cause, dated the 27th day of October, 1916, for  
the issuance of a temporary restraining order en-  
joining and restraining Wm. S. Noyes, B. S. Noyes,  
L. Osborn, John W. F. Peat and L. M. Doherty, de-  
fendants, Presidio Mining Company and any officer  
thereof, F. M. Parcells and J. D. Ralph, their agents,  
servants, employees, representatives and attorneys,  
or either or any one of them, from the commission of  
certain acts in said order to show cause and tempo-  
rary restraining order particularly set forth, upon  
the giving and filing of a good and sufficient bond in  
the sum of One Thousand Dollars (\$1,000.00);

NOW, THEREFORE, the American Surety  
Company of New York, a corporation duly organ-  
ized under the laws of the State of New York, and

duly authorized to transact business in the State of California and said Northern District of California, in consideration of the premises hereby undertakes in the sum of One Thousand Dollars, and hereby promises to the effect that the said complainants above named will pay to said Wm. S. Noyes, B. S. Noyes, L. Osborn, John W. F. Peat, L. M. Doherty, Presidio [79] Mining Company, F. M. Parcells and J. D. Ralph, or any of the persons referred to in said temporary restraining order, damages not exceeding the sum of One Thousand Dollars that they or any of the said persons may suffer by reason of the making or issuance of said temporary restraining order, in case it shall be finally determined that said order was improperly granted or issued, and hereby agrees that in case of the breach of any condition hereof, the above-entitled Court may upon notice to it of not less than ten days, proceed summarily in the above-entitled suit to ascertain the amount of which the said surety is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

IN WITNESS WHEREOF, the corporate seal and name of said American Surety Company of New York is hereto affixed, and attested by its duly authorized officers, this 27th day of October A. D. 1916.

AMERICAN SURETY COMPANY OF  
NEW YORK.

By H. J. DOUGLAS, (Seal)

Resident Vice-president.

Attest: R. D. WELDON,

Resident Assistant Secretary.

October 27, 1916.

Approved:

BLEDSON,  
D. J.

[Endorsed]: Filed Oct. 27, 1916. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[80]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Order to Show Cause and Temporary Restraining  
Order.**

Upon reading the affidavit of W. S. Overton, and  
on motion of Wm. F. Rose, Esq., solicitor for com-  
plainants, and good cause appearing therefor, and  
plaintiff having given an undertaking herein duly  
approved,

IT IS HEREBY ORDERED: That Wm. S.  
Noyes, B. S. Noyes, L. Osborn, John W. F. Peat,  
and L. M. Doherty, defendants, Presidio Mining

Company, and any officer thereof, F. M. Parcells, J. D. Ralph, and each of said parties, show cause, if any they have, before the Judge of this court in the courtroom of Division 2, Federal Building, Seventh and Mission Streets, San Francisco, Northern District of California, on the 6th day of November, 1916, at 10:00 o'clock A. M., or as soon as counsel can be heard, why an injunction should not issue preventing the above-named parties, their agents, employees, servants, representatives, or attorneys, from transferring any of the capital stock of the Presidio Mining Company heretofore or now held by said respective parties or their transferees, and also to further show cause why said respective parties, transferees, agents or attorneys, should not be compelled to deposit with the Clerk of this court any and all shares of stock of said Presidio Mining Company standing in the name of defendants [81] on the books of this company at the time of the trial of this suit in March 1916, whether held in that certain voting trust aggregating 87,883½ shares or otherwise, and subsequently transferred to, by or through any of the above-named parties, pending the final judgment of this Court.

IT IS FURTHER ORDERED, that the said above-named parties and each of them, their agents, servants, employees, representatives, or attorneys, are temporarily restrained, and each of said parties is hereby ordered to refrain from transferring, directly or indirectly, all or any of the shares of the capital stock of the Presidio Mining Company standing in the names of said above-named parties,



or either or any of them, whether held in that certain voting trust aggregating 87,883½ shares entered into July 7, 1914, by and between defendants first above named, and also any and all other shares of the capital stock of Presidio Mining Company held by defendants, or either or any one of them, directly or indirectly, at the time of the trial of this suit in March, 1916, and subsequently transferred on the books of Presidio Mining Company, or otherwise, by, to or on behalf of any of the hereinabove named parties, directly or indirectly, pending the further order of this Court.

Dated October 27, 1916.

BENJAMIN F. BLEDSOE,  
Judge.

[Endorsed]: Filed Oct. 27, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[82]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OSBORN,  
JOHN W. F. PEAT and L. M. DOHERTY,

Defendants.

**Undertaking on Injunction Pendente Lite.****KNOW ALL MEN BY THESE PRESENTS:**

Whereas, an order has been made in the above-entitled cause dated the 12th day of December, 1916, for the issuance of an injunction *pendente lite* enjoining and restraining defendants Wm. S. Noyes, B. S. Noyes, and L. Osborn above named, their and each of his agents, servants, employees, representatives and attorneys, and all other persons acting in aid of them, or either or any one of them, from the commission of certain acts in said order particularly set forth, and commanding said parties to deposit an aggregate of 59,544  $\frac{5}{6}$  shares of the capital stock of the Presidio Mining Company with the Clerk of the above-entitled court and in said suit, upon the giving and filing of a good and sufficient bond in the sum of Two Thousand Five Hundred Dollars (\$2,500.00);

NOW, THEREFORE, the American Surety Company of New York, a corporation duly organized under the laws of the State of New York, and duly authorized to transact business in the State of California and said Northern District of California, in consideration of the premises hereby undertake in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) and hereby promise to [83] the effect that the said complainants above named will pay to the said defendants, Wm. S. Noyes, B. S. Noyes or L. Osborn, or any of the persons referred to in said injunction *pendente lite*, in damages not exceeding the sum of \$2,500.00, that they or any of the said persons may jointly or severally

suffer by reason of the making or issuance of said injunction *pendente lite*, in case it shall be finally determined that said injunction was improperly granted or issued, and hereby agrees that in case of the breach of any conditions hereof, the above-entitled Court may upon notice, to wit, of not less than ten days, proceed summarily in the above-entitled suit to ascertain the amount which the said surety is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

IN WITNESS WHEREOF, the corporate seal and name of said American Surety Company of New York it hereto affixed, and attested by its duly authorized officers, this 12th day of December, A. D. 1916.

AMERICAN SURETY COMPANY OF  
NEW YORK.

By H. J. DOUGLAS. (Seal)

Attest: D. ELMER DYER,  
Resident Assistant Secretary.

December —, 1916.

Approved:

W. B. MALING,  
Clerk.

[Endorsed]: Filed Dec. 12, 1916. Walter B. Maling, Clerk. [84]

(Title of Court and Cause.)

**Injunction Pendente Lite.**

United States of America,

Northern District of California,—ss.

The President of the United States of America, to  
Wm. S. Noyes, B. B. Noyes, and L. Osborn,  
Their and Each of His Agents, Servants, Em-  
ployees, Representatives or Attorneys, and Each  
of Them, GREETING:

Whereas, on this 12th day of December, A. D. 1916, an order in the above-entitled court and suit was made, directing that an injunction *pendente lite* issue herein, and wherein and whereby it was ordered, adjudged and decreed that Wm. S. Noyes, B. S. Noyes and L. Osborn, and their and each of his agents, servants, employees, representatives or attorneys, and each of them, be enjoined and restrained from transferring to any persons whomsoever all or any portion of a total aggregate of 59,544  $\frac{5}{6}$  shares of the capital stock of the Presidio Mining Company held by L. Osborn in December, 1912, pending the determination of this suit, and also that said respective parties deposit with the clerk of this court a total of 59,544  $\frac{5}{6}$  shares of said capital stock;

Now, therefore, in accordance with the terms of said order directing that an injunction *pendente lite* issue in said suit, we hereby strictly command [85] and enjoin you, and each of you, the said Wm. S. Noyes, B. S. Noyes and L. Osborn, you and each of your agents, servants, employees, repre-

sentatives or attorneys, and all persons acting in aid of you, or either or any one of you from transferring, directly or indirectly, all or any part or portion of said aggregate number of 59,544  $\frac{5}{6}$  shares of the capital stock of the Presidio Mining Company, and we do hereby further strictly command and enjoin the Presidio Mining Company, its officers or agents, directly or indirectly to refrain from transferring all or any part or portion of said 59,544  $\frac{5}{6}$  shares of the capital stock of said company and we likewise hereby command that you and each of you forthwith deposit with the Clerk of this court the following shares of stock now standing in the names of the following parties:

Cert. No. 131, dated Oct. 21, 1916,	
Wm. S. Noyes, Pledgee of L. Osborn .....	25,000 shares
Cert. No. 134, dated Oct. 25, 1916,	
Frank M. Parcels .....	1,000 shares
Cert. No. 135, dated Oct. 25, 1916,	
Wm. S. Noyes .....	1,000 shares
Cert. No. 136, dated Oct. 25, 1916,	
Wm. S. Noyes .....	1,000 shares
Cert. No. 137, dated Oct. 25, 1916,	
Wm. S. Noyes.....	1,000 shares
Cert. No. 138, dated Oct. 25, 1916,	
Wm. S. Noyes .....	1,000 shares
Cert. No. 139, Dated Oct. 25, 1916,	
Wm. S. Noyes .....	15,000 shares
And in addition to said 45,000 shares, that Wm. [86] S. Noyes deposit 8,618 shares, and B. S. Noyes 5,926 $\frac{5}{6}$ shares, pending the determination	

of this suit; which commands and injunction you and each of you are respectively required to observe and obey until other or further orders of said District Court shall be made in the premises.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 12th day of December, in the year of our Lord one Thousand nine hundred and sixteen, and of our Independence the one hundred and forty-first.

[Seal]

WALTER B. MALING,  
Clerk.

**(Return on Service of Writ.)**

United States of America,  
Northern District of California,—ss.

I hereby certify and return that, I served the within injunction *pendente lite*, on the herein named, Wm. S. Noyes, B. S. Noyes and Frank M. Parcels, each by handing to and leaving a true and certified copy thereof with, Wm. S. Noyes, B. S. Noyes, and Frank M. Parcels, each personally at San Francisco, California, in said District on the 12th day of December, A. D. 1916.

J. B. HOLOHAN,  
United States Marshal,  
By Lawrence J. Conlon,  
Office Deputy.

[Endorsed]: Filed Dec. 13, 1916. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[87]



In the District Court of the United States, in and for the Southern Division of the Northern District of California, Second Division.

No. 196.—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WILLIAM S. NOYES, B. S. NOYES, L.  
OSBORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Master's Report on Accounting.**

To the Honorable, the Judge of the above-entitled Court:

The report of H. M. Wright, Standing Master in Chancery of said court, respectfully shows as follows:

On February 16, 1918, there was entered in the above-entitled court and cause an interlocutory decree containing findings as to the issues, and an order of reference to the undersigned in terms as hereinafter set forth. Thereafter, on March 6, 1918, the Master made his order requiring the defendants within a time stated to file with him a statement of account in writing responsive to the interlocutory decree, and as specifically required in said order. The said order of the Master is herewith separately returned. Thereafter, on April 1, 1918, the said defendants other than the Presidio

Mining Company, by their attorneys, R. T. Harding, Esq., Henry E. Monroe, Esq., and J. J. Dunne, Esq., filed a written account in response to the Master's order, which statement of account is also separately returned, together with two bundles of vouchers thereof, described as Exhibit "A" and Exhibit "B." [88]

On June 24, 1918, the taking of evidence upon said accounting was begun before the Master, William F. Rose, Esq., appearing for plaintiffs, and R. T. Harding, Esq., and J. J. Dunne, Esq., for defendants other than Presidio Mining Company, and the said taking of evidence continued from day to day until August 23, 1918. Thereafter, on August 27, 1918, the cause was orally argued by counsel, with leave to file points and authorities thereafter, and this was done. During the said hearing there were read in evidence the depositions of James D. Shannon, E. G. Gleim, E. M. Gleim and H. B. Young, the depositions of George A. Chavez, E. G. Gleim, F. R. Russell and G. W. Gleim, and also the depositions of Spencer Gregg. There were also received in evidence documentary exhibits marked as Plaintiffs' Exhibits 1 to 42, inclusive, and Defendants' Exhibits "A," "B," etc., to "I," inclusive. The transcript of testimony will show that the parties also offered in evidence certain files already of record in this case. I herewith separately return said transcript of testimony in twelve pamphlet volumes reported by Charles R. Gagan and Edward W. Lehner, Official Reporters of this Court; also the said exhibits and said depositions.

The said defendants' account, said testimony, depositions and exhibits and the said files of the original case (including the Master's official knowledge as to certain expenses of suit in the Master's office herein referred to) constitute all the evidence, other than that gained by personal observation of the witnesses at the hearing, upon which this report is based.

Before proceeding with the statement of account, and for a better understanding of its findings and conclusions, I make brief reference to the nature of the suit and to the findings in the interlocutory decree. It is a stockholders' suit brought by minority stockholders against the corporation, and [89] against individuals controlling it adversely to the minority stockholders. The decree adjudges in complainants' favor that the individual defendants were guilty of conspiracy and of fraud against the company and its minority stockholders. It finds that W. S. Noyes illegally obtained benefits for himself in various ways while in a fiduciary relation to the company; that defendant Osborn, while secretary, had embezzled its moneys; that various resolutions and transactions entered into during the period of majority control were fraudulent and void. It finds that a transaction whereby William S. Noyes obtained adjoining mining property referred to herein as Section 5 was a fraud upon the company, and was held in trust for the company; that certain transactions in 1913, including a lease of Section 5 to the Presidio Mining Company, a bonus resolution awarding Noyes \$45,000 as a bonus

for getting the lease, and a further contract merging the prior ones and providing that Noyes should be paid one-half of the net proceeds of the ore from Section 5 were all illegal, fraudulent and void, and were set aside. Among other things, the transaction by which Noyes obtained money from the company under these fraudulent contracts, paid over certain sums as received to Osburn, who, by concealed entries, made good his embezzlement and gave to Noyes a promissory note and the pledge of his stock, whereby Noyes achieved control of the company, were all held collusive and fraudulent transactions; the Osborn note to Noyes was required to be delivered to the clerk of the court subject to the Court's order; the stock pledged and other stock was required to be deposited in court awaiting final decree. The accounting orders covers all these matters, together with excessive salaries, etc.

The extent of the Master's authority is, of course, defined by the terms of the interlocutory decree. There are many specific directions, followed by a general direction. My plan will [90] be to quote, first, the general direction for the accounting, and to quote the specific directions, not necessarily in the order in which they occur, followed in each case with the findings and conclusions as to the specific matters referred to. I may say that at the hearing I was in some doubt as to the scope of the reference, and so expressed myself. This doubt arose out of the terms of the order of reference in the decree as prepared by counsel,

making it uncertain in certain cases whether I was to make findings. It will be observed, however, that before signing the decree Judge Van Fleet inserted, as will appear hereafter, the words "and findings," from which action, on full consideration, I have concluded that I am directed to find as to all matters specifically referred to, except certain things specifically reserved for the Court upon the coming in of the master's report. The general order of reference is as follows (decree, page 8):

"It is further ordered, adjudged and decreed, that an accounting be had herein and said matter is hereby referred to H. M. Wright, the Standing Master in Chancery of this court, for full investigation and accounting as herein indicated, pursuant to law and the rules of this court in such cases made and provided; \* \* \* that said Master in Chancery report the evidence taken or used before him to this Court, together with his opinion and findings (underscored words inserted by and initialed "Van Fleet, J.") thereon."

1. Section 5. (Decree, page 6:)

"That William S. Noyes account for all sums of money found by the Master as received by said William S. Noyes on account of Section 5, together with interest thereon, at the rate of 7 per cent per annum from dates of receipt of the several amounts so received by him from the Presidio Mining Company, in addition to his salary, since January 1, 1913." [91]

(Decree, pages 7-8:)

"That said William S. Noyes be credited with the



purchase price of Section 5, together with interest thereon, at the rate of 7 per cent per annum, from January 25, 1913, and also any sums which may be found to have been paid by said William S. Noyes for the use and benefit of said Presidio Mining Company, together with interest on said sums at the rate of 7 per cent per annum from dates of application.”

In the account which follows, I have found, first, the debit items which are actual cash received from the Presidio Mining Company's treasury by William S. Noyes from January 1, 1913 to date, including interest on said sums from date of receipt to November 30, 1918, the date when this report will be finally settled and filed with the clerk of the court. I omit from the debit items a certain item referred to in Noyes' statement of account under date of October 8, 1913, in the sum of \$3500. This date is admittedly wrong, and should be September 6, 1913. Noyes signed a credit voucher acknowledging receipt of \$3500 on account of one of the contracts which has been found to be void, and turned it over to Osborn to apply, by appropriate bookkeeping entries, on account of his embezzlement. Since the latter transaction on both sides has been declared fraudulent by the Court, I omit this sum, both as a debit and a credit, and leave Osborn's debt to the company in that amount unimpaired. Of course, if the interlocutory decree should be hereafter modified or reversed on appeal, the accounting in this and in various other respects will be affected. In the credits I have included



amounts paid on account of the purchase of Section 5 which are accepted by the complainants as rendered by the defendants in their account and also taxes on those lands paid by Noyes. I have excluded from the credit items two items, namely, May 13, 1914, \$218.15, and [92] and January 24, 1915, \$193.34, being the extent to which W. S. Noyes' income tax was affected by money received by him from the Presidio Mining Company. These are not moneys paid by him "for the use and benefit of said Presidio Mining Company." The Presidio Mining Company must have paid a tax upon this money as income, and if it had remained, as it should have, money on hand, they might have paid a personal property tax to that extent; I have no means of determining what amount. I have also added as a credit two sums of \$5,000 and \$5,689.75, respectively, paid by Noyes in February and March, 1913, to Osborn and by him applied in partial satisfaction of sums embezzled. The Court in effect has treated this sum as money returned to the company by Noyes, leaving the indebtedness of Osborn unaffected.

I find the account as regards Section 5 as follows:

# DEBITS.

1913.

February 24 .....	\$11,000.00
7% Interest to Nov. 30, 1918, 5 yrs.,	
9 months, 4 days.....	4,440.32
February 28 .....	276.50
Int. 5 years, 9 months, 2 days.....	111.23

March 21 .....	5,000.00
Int. 5 years, 8 months, 9 days.....	1,990.10
April 23 .....	447.35
Int. 5 yrs., 7 months, 7 days.....	175.17
May 9 .....	352.25
Int. 5 years, 6 months, 21 days.....	136.86
May 15 .....	1,000.00
Int. 5 years, 6 months, 15 days.....	387.83

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Forward.....\$25,317.61

[93]

1913                      Bro't Forward.....\$25,317.61

August 31 .....	458.00
Int. 5 years, 3 months.....	168.04
October 1 .....	3,000.00
Int. 5 years, 2 months.....	1,085.00
October 14 .....	1,000.00
Int. 5 years, 1 month, 16 days.....	359.87
October 27 .....	469.50
Int. 5 years, 1 month, 3 days.....	167.33
December 30 .....	3,485.90
Int. 4 years, 11 months.....	1,199.72

1914.

January 2 .....	1,500.00
Int. 4 years, 10 months, 28 days.....	515.62
March 7 .....	1,000.00
Int. 4 years, 8 months, 23 days.....	331.01
July 3 .....	1,000.00
Int. 4 years, 4 months, 27 days.....	308.45
September 26 .....	734.50
Int. 4 years, 2 months, 4 days.....	214.70

1915.

February 8 .....	190.00
Int. 3 years, 7 months, 22 days.....	50.46
March 10 .....	2,000.00
Int. 3 years, 8 months, 20 days.....	521.82
May 1 .....	3,786.20
Int. 3 years, 7 months.....	949.69
June 29 .....	5,035.20
Int. 3 years, 5 months, 1 day.....	1,204.68
July 20 .....	6,075.05
Int. 3 years, 4 months, 10 days.....	1,429.31

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Forward.....\$63,557.66  
[94]

1915. Bro't Forward.....\$63,557.66

September 20 .....	5,819.15
Interest, 3 years, 2 months, 10 days....	1,301.21
November 15 .....	3,650.00
Interest, 3 years, 15 days.....	777.14
December 2 .....	2,556.60
Interest 2 years, 11 months, 28 days....	535.93

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Total Debits.....\$78,197.69

### CREDITS.

1913.

January 25 .....	\$16,786.66
Interest, 5 years, 10 months, 5 days....	6,870.84
February 28 .....	679.00
Interest, 5 years, 9 months, 2 days....	273.25
March 3 .....	5,000.00
Interest, 5 years, 8 months, 27 days....	2,001.77
March 29 .....	1,243.67

Interest, 5 years, 8 months, 1 day.....	493.71
May 15 .....	200.00
Interest, 5 years, 7 months, 15 days....	78.79
August 31 .....	75.00
Interest, 5 years, 3 months.....	27.57
September 18 .....	25.00
Interest, 5 years, 2 months, 12 days....	10.07
February 25, Osborn.....	5,000.00
Interest, 5 years, 9 months, 5 days....	2,017.23
March 1, Osborn.....	5,689.75
Interest, 5 years, 9 months.....	2,189.98
March 31 .....	186.77
Interest, 5 years, 8 months.....	79.75
1914.	
February 12 .....	190.88
Interest, 4 years, 9 months, 18 days....	64.04
1915.	
January 24 .....	245.75
Interest, 3 years, 10 months, 6 days....	66.27
1916.	
January 12 .....	197.59
Interest, 2 years, 10 months, 18 days...	39.88
1917.	
Dec. 19 .....	269.00
Interest, 11 months, 11 days.....	17.77

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Total Credits..... ..\$50,019.99

[95]

### RECAPITULATION.

Total Debits, November 30, 1918 .....	\$78,197.69
Total Credits, November 30, 1918 .....	50,019.99

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Balance due, November 30, 1918... \$28,177.70

I find, accordingly, a balance due on November 30, 1918, from W. S. Noyes to the Presidio Mining Company of \$28,177.70.

## II. SALARIES.

The decree finds that:

“The resolutions relative to salaries and increases thereof and payments made thereunder from the treasury of the Presidio Mining Company to said defendants as directors and officers of said corporation \* \* \* are each, every and all illegal and fraudulent.” (Decree, page 2.)

and further:

“That increases in salaries of defendants as directors and officers of Presidio Mining Company, including the increase in salary of E. M. Gleim since December, 1912, are each, every and all illegal and fraudulent, together with each, any and all acts, proceedings or authorizations relative thereto shown by the records of said Presidio Mining Company as having been adopted by said defendant directors and officers.” (Decree, page 4.)

The decree, in addition to the general order of reference requiring findings heretofore quoted, makes specific orders of reference to the master as follows:

“That said L. Osborn report and account for all salaries received by him since January 1, 1913 from Presidio Mining Company, or any of its officers, on behalf of said corporation.” (Decree, page 5.)

“That defendants W. S. Noyes, B. S. Noyes, John W. F. Peat, and L. M. Doherty report the salaries received by them each respectively from the Presidio Mining Company since January 1, 1913.” (Page 5.)

“That the defendants be required to present evidence before the Master, if any they have, to show that said salaries or increases thereof were and are reasonable and fair; also to take evidence on behalf of complainants wherein said salaries or increases thereof were and are unreasonable or unfair.” (Page 5.)

“That said Master take and report like evidence in regard to the salary of E. M. Gleim, and any increases thereof.” (Page 5.) [96]

“That the Master ascertain and report all salaries and increases in salaries paid directly or indirectly to the defendants other than the Presidio Mining Company, and also E. M. Gleim, since January 1, 1913, as hereinbefore ordered, together with any other sums received by said defendants as and for directors fees, traveling expenses or other purposes since January 1, 1913.” (Page 8.)

I construe these directions as requiring me to find the actual salaries, directors fees, etc., paid the persons named, and as regards all the defendants, except Gleim and Doherty, to find whether the salaries paid were reasonable and the amount of excess in each case. Miss Doherty was paid no salary. If, however, the decree can be construed as requiring me to find as to the reasonableness of the



salary paid to E. M. Gleim, who is not a defendant, then I find that the actual salaries paid to him were reasonable. It is to be particularly noted that the period under consideration is restricted to the period following January 1, 1913; and also that I am not required to find interest due upon excessive amounts, if any.

The finding first noted to the effect that the resolutions as to salaries and the payments of salaries were illegal and fraudulent, might imply either that the directors concerned voted upon or were a part of a quorum at a meeting where resolutions fixing salaries were passed,—a not infrequent cause of illegality; or, it may be that the Court declared the illegality of the resolutions and the payments because of the conspiracy which has been found, to so manage the corporation as to divert its funds for the benefit of the majority stockholders in fraud of the minority stockholders. The law in such matters should be first stated. If a director or officer of a corporation fails in his primary duty of loyalty to his principal and is guilty of fraud, he may, in the discretion of the Court, be denied compensation entirely, and compensation paid may be recovered. The purpose of this drastic rule is to insure honesty. [97] *Mechem on Agency*, Sections 1189, 1190; 1588, 1589. The Courts may, however, and frequently do allow some compensation for such services of officers as may be considered not tainted with fraud.

Directors, as such, are not entitled to compensation for the assumption of their trust, unless there

is a prior valid contract for payment for their services. In this case, I shall deny directors fees which were paid, for the reason that no such contract or valid resolution has been brought to my attention. Directors, however, may, as officers of a corporation, as here, be entitled to a reasonable salary. If, however, it is to be considered that the Court has here pronounced the resolutions as to salaries illegal, irrespective of fraud, then the director, as officer, is not entitled to salary by virtue of a contract but for the reasonable value of his services under a *quantum meruit*. Bassett vs. Fairchild, 132 Cal. 637; Gardner vs. Butler, 30 N. J. Eq. 724.

The position of the complainants here in argument appears to be that all of these defendants should return their salaries paid since January 1, 1913, though they seem to make concession of \$75 a month to Osborn, who was secretary for part of that period. Why Osborn, a confessed embezzler, should be allowed any sum in preference to other defendants, is not clear. It seems to me that the Court, in drafting the decree and directing the scope of the reference had in mind the milder rule that these defendants should be allowed a reasonable sum for their services as officers to the corporation; the fruits of any frauds being recovered to the corporation otherwise. I have accordingly, in the tabulation which follows, noted the actual amounts received by various officers, and have stated what, in my opinion, was a reasonable salary in each case, with a notation of the excessive payments for which

repayment [98] to the Presidio Mining Company is due. The salaries for the period from 1885 to 1913 are given for the purposes of comparison only. The year 1912 is separately stated, as it was the year prior to the one with which this accounting begins. It will be noted that as I have deemed the salary of the secretary at all times excessive, I have stated for the year 1912 what I consider would have been a reasonable salary, so as to make the two years fairly comparable. I do not mean in this tabulation to imply that the salary of the superintendent for 1912, W. S. Noyes, at \$450 per month, was a reasonable one. The tabulation follows:

Officers.	Amt. Mo.	Received Year	Reasonable Salary Mo.	Excess Due P. Mining Co. per Annum
		1885—1907		
Pres. (Boyd) .....	\$200	\$2400		
Sec. (Osborn) .....	300	3600		
Supt. (W. S. Noyes) .....	450	5400		
Total .....		<u>\$11400</u>		
		1908—1911		
Pres. (Peat) .....	25	300		
Secy. (Osborn) .....	300	3600		
Supt. (W. S. Noyes) .....	450	5400		
Total .....		<u>\$9300</u>		
		1912		
Pres. (Peat) .....	25	300		
Secy. (Osborn) .....	300	3600	100	1200
Supt. (Noyes) .....	450	5400		
Asst. Supt. (Gleim) .....	250	3000		
Total .....		<u>12300</u>		<u>say \$9900</u>

Officers.	Amt. Mo.	Received Year	Reasonable Salary Mo.	Excess Due	
				P. Mining Co. Year	
		1913			
Pres. (Peat) .....	25	25	25	25	....
“ (B. S. Noyes) .....	150	1650	100	1100	\$550
V. P.—Mgr. (W. S. Noyes) .....	450	5400	250	3000	2400
Secy. (Osborn) .....	300	3600	75	900	2700
Asst. Secy. (Peat) .....	25	275	25	275	
Supt. (Gleim) 7 mos. ....	350)		350)		
5 mos. ....	450)	4700	450)	4700	
Total .....		<u>\$15650</u>		<u>\$10000</u>	

Officers.	Amt. Mo.	Received Year 1914	Reasonable Salary Mo. Year	Excess Due P. Mining Co.
Pres. (B. S. Noyes) .....				
10 mos. ....	\$150)			
2 " .....	125)	\$1750	\$100	\$1200
V. P.—Mgr. (W. S. Noyes)				\$550
10 mos. ....	450)			
2 mos. ....	375)	5250	250	3000
Secy. (Osborn) .....				2250
10 mos. ....	300)			
2 " .....	250)	3500	75	900
Asst. Secy. (Peat) .....				1600
10 mos. ....	25)		25)	
2 " .....	20	290	20)	290
Supt. Gleim .....				
10 mos. ....	450)		450)	
2 " .....	375)	5250	375)	5250
Total .....		<u>\$16040</u>		<u>\$10640</u>



Officers.	Amt. Mo.	Received Year	Reasonable Salary		Excess Due P. Mining Co.
			Mo.	Year	
		1915			
Pres. (B. S. Noyes) .....	125	1500	100	1200	300
V. P.—Mgr. (W. S. Noyes) .....	375	4500	250	3000	1500
Secy. (Osborn) 9 mos. ....	250	2250	75	675	1575
Secy. (Peat) 3 “ .....	270	810	100	300	510
Asst. Secy. (Peat) .....					
9 mos. ....	20	180	20	180	
Supt. (Gleim) 10 “ .....	375				
1’ “ .....	397.50				
1 “ .....	450	4597.50		4597.50	
Total .....		<u>\$13837.50</u>			<u>\$9952.50</u>

Officers.	Amt. Mo.	Received Year	Reasonable Salary		Excess Due P. Mining Co.
			Mo.	Year	
1916					
Pres. (B. S. Noyes).....	125	1500	100	1200	300
V. P.—Mgr. (W. S. Noyes).....	375	4500	250	3000	1500
Secy. (Peat).....	270	3240	100	1200	2040
Supt. (Gleim) .....	450	5400	450	5400	
		<u>\$14640</u>		<u>\$10800</u>	
1917					
Pres. (B. S. Noyes).....	125	1500	100	1200	300
V. P.—Mgr. (W. S. Noyes).....	375	4500	250	3000	1500
Secy. (Peat).....	270	3240	100	1200	2040
Supt. (Gleim) .....	450	5400	450	5400	
		<u>\$14640</u>		<u>\$10800</u>	

Excess Due  
P. Mining Co.

25  
125  
170

Reasonable  
Salary  
Mo. Year

January, 1918.

100  
250  
100  
450

Amt.  
Mo.  
Received  
Year

Officers.

Pres. (B. S. Noyes) ..... 125  
V. P.—Mgr. (W. S. Noyes) ..... 375  
Secy. (Peat) ..... 270  
Supt. (Gleim) ..... 450

[100]  
RECAPITULATION—Amounts Due Company.

Salaries.	Directors Fees.	Total
B. S. Noyes .....\$2025	\$85	\$ 2110
W. S. Noyes ..... 9275	60	9335
L. Osborn ..... 5875	45	5920
J. W. F. Peat ..... 4760	50	4810
L. M. Doherty ..... —	45	45
		<hr/> \$22,220

Traveling expenses in the sum of \$3363.15 were paid to W. S. Noyes, the reasonableness of which is not disputed.

Some explanation of my conclusions may be in order. First, as to the secretary, Osborn: During all the period from at least 1906 to 1913 Osborn was stealing the money of the company, as will be shown elsewhere. Not only for this reason, but even if he had been entirely loyal, a salary of \$300 a month seems to me entirely disproportionate to the duties and responsibilities of his office, as disclosed by the evidence. It would appear that such a salary arose solely out of the fact that Osborn was a large stockholder. It is not infrequent that in such cases large salaries are paid without regard to the value of services, but in all such cases the transaction is a dishonest one, and a Court will undo it in every case that comes before it. Although he was a known embezzler of the company's funds, he was kept in office by the other defendants as a director and as secretary until November 10, 1915, when he was committed to Agnews State Hospital for the Insane for treatment as an inebriate, being discharged November 10, 1917 (Tr., 296). During this period the defendant Peat was kept in office at a small salary, as assistant secretary. I am convinced that he was an unnecessary officer, but I have allowed his salary and deducted the amount from what would have been reasonably due to Osborn had he performed [101] the duties of his office without assistance. I have endeavored, in the case of Osborn, as well as in the cases of B. S. Noyes and

W. S. Noyes, to fix a reasonable salary irrespective of the rather shocking findings of fraud made by the decree and shown by the evidence here. If, however, there has been an unconscious influence upon my judgment, the defendants have only themselves to blame for the situation.

As to the salaries of B. S. Noyes and W. S. Noyes: B. S. Noyes took office in the early part of 1913 at his brother's request, largely for the purpose of watching Osborn, to see that he did not steal the money of the corporation. (Tr., 29.) He is, however, a man of ability, and undoubtedly performed services to the corporation which are worth the sums which I have set forth. It may be that if W. S. Noyes had not been employed as vice-president and general manager Mr. B. S. Noyes, as president, would reasonably have been worth the salaries of \$150 and \$125 per month actually paid to him. W. S. Noyes has been connected with this mine since 1885. He was superintendent until 1913, and resided in Shafter, Texas, where the mine was situated, until 1901. After that date he lived in Oakland, making occasional visits to the mine, both he and his brother, B. S. Noyes, giving only a part of their time to this company. After the removal of W. S. Noyes to this state it appears from the evidence that for part of the time prior to 1912 H. S. Gleim had some sort of supervisory position in Shafter, and E. M. Gleim was in a subordinate position. In 1912 Noyes was in charge as superintendent, but the assistant superintendent in charge on the ground was E. M. Gleim, at a salary of \$250

a month. After W. S. Noyes secured control of this corporation in 1913, he became vice-president and general manager at the same salary of \$450 a month, and E. M. Gleim became superintendent, first at \$350 a month and later at [102] \$450 a month, and later still at \$375 a month. Gleim's salary is now \$450 a month. I think the salaries actually paid to Superintendent Gleim were reasonable salaries. He is a graduate of Stanford University in mining, and actually designed and superintended the erection of the cyanide installation in 1913, which has been a notable factor in improving the condition of this company. I have had his salary generally in mind in determining the salaries to be paid to W. S. Noyes and B. S. Noyes. I have also had in mind the fact that Mr. Handy, who represents the receiver at Shafter, is being paid \$450 a month, the same salary as the superintendent. There is need of an executive at San Francisco, but I do not believe that there is need of two executives at San Francisco. Furthermore, I have assumed that the discomforts and financial disadvantages to an active business man of a residence in a frontier town in Texas are worth at least \$100 a month. In other words, if Mr. Handy could perform his duties and reside in San Francisco, I should consider that his services were worth \$100 less than they are under the circumstances. Hence, I fix the salaries of the Noyes brothers together at the sum of \$350 a month. The fact that their employment takes only a part of their time, that they have opportunities of en-



gaging in other businesses, and do so engage, represents a value to them of at least \$100 a month.

As to the defendant Peat: This witness seems at all times to have been a dummy. He was obviously so during the period of his presidency at \$25 a month, not only from the salary received, but by the direct testimony of the embezzler, Osborn, who effected his thefts by reason of the fact that Peat signed any checks which Osborn prepared for him (Tr., 137). As assistant secretary, at the same salary, he himself testified that his duties were merely nominal. The place was obviously made for him because he was useful to the other defendants in [103] the control of the corporation. When Osborn was committed to an insane hospital, Peat was made his successor at \$270 a month. There is very good evidence to support complainants' view that it was arranged between him and the Noyes brothers that the greater part of this salary should be applied for the benefit of Osborn's family. For six months after Osborn's commitment Peat paid \$200 a month to William Osborn, son of the defendant Osborn, and in the seventh month \$170. For this he took notes, which are in evidence, payable one day after date, upon which neither principal nor interest have been paid. There is some evidence to the effect that these purported loans were to be secured by Osborn's stock interest. There is no evidence of further payments to Osborn, or to his family, except a loan of \$200 in September, 1917, and another of \$100 during the next month to another son, Charles Osborn, for which Peat took notes secured by stock. Whatever

may be the character of the earlier loans, whether *bona fide* loans or payments under agreement, there is not sufficient reason why the *bona fides* of the last two loans should be suspected. Complainants seek to charge \$200 a month of Peat's salary as secretary to L. Osborn. Since, however, it was not paid to Osborn, and since during all this period he was legally incompetent, I do not see how any sums can be charged against him on account of Peat's salary.

### III. W. S. NOYES' TRANSACTION WITH BENTON BOWERS.

The decree orders me to find as follows:

The nature and character of the transaction of W. S. Noyes and Benton Bowers on wood contracts, hauling contracts or otherwise growing out of the contractual relations between Benton Bowers and the said Presidio Mining Company, with amounts received and interest. (Decree, page 7.)

That said W. S. Noyes further account for all sums of money received by him prior to January 1, 1913, other than salary while in the employ of the Presidio Mining Company, and during the period while complainants were stockholders in said corporation, to wit, since on or about September 14, 1908. (Decree, page 7.) [104]

That the Master ascertain and report what amount of money, if any, from any sources connected with Presidio Mining Company business, other than salary, the said W. S. Noyes received since January 1, 1913, while in the

employ of the Presidio Mining Company, with interest at the rate of 7 per cent per month, from dates of receipt thereof by said William S. Noyes. (Decree, page 7.)

The evidence shows that until a comparatively late period defendant W. S. Noyes was a concealed partner of Benton Bowers in his teaming business. The relationship arose in 1894. At the time the character of wood obtainable by the company for fuel purposes being unsatisfactory, Noyes, the superintendent of the mine, took up with Bowers the proposition of obtaining wood from Mexico, just over the river frontier. Bowers *need* money to handle the transaction, and Noyes undertook to furnish him one-half of the necessary money for a half interest in the profits of the business. (Tr. 633, seq.) Noyes says (Tr. 204), that he put in about \$4000 into the business with Bowers. Bowers remembers only \$800 that was advanced by Noyes (Tr. 643). It was anticipated, they say, that the wood should be supplied to the company at cost, and that this was done during all the time when wood was delivered. The profit in the business was made in selling supplies to teamsters, to workmen, and to ranchers along the road (Tr. 639). The company commenced to use oil for fuel in 1902 (Tr. 637), and thereafter only such wood was hauled as was necessary for retorting purposes. At a period which does not definitely appear, Mr. Bowers undertook the general freighting of the company's supplies in and out of Shafter to the railroad point, and is still doing so. Mr.

Handy, the receiver's representative, testifies that his price is slightly higher than what other teamsters would charge, but that it is worth it for the reliability and efficiency of his service. I have no reason to doubt this has always been the case. Bowers claims that he has made [105] no money out of either his wood hauling or freight hauling contracts with the company, his profits coming from outside transactions. This, however, seems rather a matter of impression on his part rather than of exact calculation (Tr. 650). I believe that the prices charged by him to the company were reasonable prices. Noyes was never known to anyone to be interested in the business (Tr. 646-7, 650). Bowers says (Tr. 646) that between 1896 and 1908 there was an average profit in the business of \$100 a month for each of the partners, namely Bowers and Noyes. After 1908 expenses increased and the profits diminished, as are shown in tabulation hereafter set forth. During all this time Noyes had the absolute responsibility and discretion as regards the company's business in relation to making contracts of haulage and freights.

The law on this subject is clear, that one in a fiduciary relationship, like the superintendent of this mining corporation, is not permitted to profit directly or indirectly from any business connected with his trust beyond the amount of his stated salary, unless his adverse interest is clearly known and agreed to by his principal. The fairness or unfairness of the transaction will not be inquired into, and it is immaterial whether the corporation was in-

jured or not by the contract in which the agent was interested. The reason for this is, first, that if fraud exists it is often difficult of proof, especially as in such cases as this after a lapse of many years; second, that the discretion of a trusted agent cannot be permitted in any way to be fettered by an adverse self-interest. It might, for example, have been better during some part of this period for another contractor to have been given the work instead of Bowers. Mr. Handy says, for example, that while he considered it wise at the present time to maintain relations with Mr. Bowers, it might, in normal times, be better for the company to conduct [106] its own transportation of freight. (Tr. 570.) Obviously, in the decisions of such questions as this, whether that decision be for or against a continued contract with Bowers, Noyes' discretion would be unfavorably influenced by his own participation in the profits of Mr. Bowers' business. The law on this subject is settled in many cases, of which I cite the following, which will repay a careful reading: *U. S. v. Carter*, 217 U. S. 286, 305, seq.; *Wickersham v. Crittenden*, 93 Cal. 29; *Western States Life Insurance Co v. Lockwood*, 166 Cal. 191; *Moore v. Building Association*, 45 S. W. 974 (Texas).

I find, accordingly, that defendant William S. Noyes received from Benton Bowers on account of their partnership business since September 4, 1908, the following sums, which should now be returned to the Presidio Mining Company, with interest at 7 per cent per annum to date of this report, as follows:



	Interest to Nov. 30, 1918.			Total	
		9 yrs.	11 mos.		
Dec. 31, 1908	\$500			\$347	\$847
“ 1909	500	8 yrs.	11 “	312	812
“ 1910	500	7 “	11 “	277	777
“ 1911	500	6 “	11 “	242	742
“ 1912	500	5 “	11 “	207	707
“ 1913	500	4 “	11 “	172	672
July, 1914	195	4 “	4 “	59.15	254.15
Totals	<u>\$3195</u>			<u>\$1616.15</u>	<u>4811.15</u>



#### IV. MINE BOARDING-HOUSE.

The decree in this regard directs as follows:

“That the Master ascertain and report to this Court the nature and character of the transactions had by the said W. S. Noyes prior to January 1, 1913, but subsequent to the time that the complainants became stockholders in the Presidio Mining Company (September 14, 1908), in regard to the mine boarding-house, with amounts received and interest at 7 per cent per annum. (Page 7.)

“That said William S. Noyes further account for all sums of money received by him prior to January 1, 1913 other than salary while in the employ of the Presidio Mining Company, and during the period while complainants were stockholders of said corporation, to wit, since on or about September 14, 1908, with interest at 7 per cent per annum.”

The facts as regards this unpleasantly petty transaction are given by William S. Noyes, himself, as follows: (Tr. page 220 seq.) Between 1893 and 1895 Noyes, then superintendent, made an arrangement with James Mann, a foreman at the mine, to conduct a boarding-house for white employees in one of the company's buildings. Noyes and Mann each put up \$200 or \$300 for dishes and other such equipment. The partners made \$30 or \$40 apiece a month for a while, though in the period under consideration, after September, 1908, Noyes states that the profits were about \$10 a month apiece. Mann left the employ of the company and the operation of

the boarding-house in September, 1910. Noyes says that shortly before that he withdrew from the partnership. The transaction was not known to any stockholder or director of the company (Tr. 224). The law which covers such a transaction as this is the same as that already stated in the discussion of the matter of Benton Bowers. I find that there is due from William S. Noyes to the Presidio Mining Company the following sums, with interest calculated to date of this report, as follows: [108]

		Interest to Nov. 30, 1918.		Total
Sept. 1908		\$10	\$7.10	\$17.10
Oct.	“	10	7.05	17.05
Nov.	“	10	7.00	17.00
Dec.	“	10	6.95	16.95
Jan. 1909		10	6.90	16.90
Feb.	“	10	6.85	16.85
Mar.	“	10	6.80	16.80
Apr.	“	10	6.70	16.70
May	“	10	6.65	16.65
June	“	10	6.60	16.60
July	“	10	6.55	16.55
Aug.	“	10	6.50	16.50
Sept.	“	10	6.45	16.45
Oct.	“	10	6.35	16.35
Nov.	“	10	6.30	16.30
Dec.	“	10	6.25	16.25
Jan. 1910		10	6.20	16.20
Feb.	“	10	6.15	16.15
Mar.	“	10	6.10	16.10
Apr.	“	10	6.05	16.05
May	“	10	6.00	16.00

June	“	10	5.95	15.95
July	“	10	5.90	15.90
Aug.	“	10	5.85	15.85
Sept.	“	10	5.75	15.70

Totals		<u>\$250</u>	<u>\$160.95</u>	<u>\$410.95</u>
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[109]

## V. TRANSACTION OF W. S. NOYES WITH E. G. GLEIM COMPANY.

The decree orders me to report as follows:

“The nature and character of the transaction of the said W. S. Noyes with the E. G. Gleim store, with amounts received and interest at 7 per cent. (Page 7.)

“That said William S. Noyes further account for all sums of money received by him prior to January 1, 1913 other than salary, while in the employ if the Presidio Mining Company, and during the period while complainants were stockholders of said corporation, to wit, since on or about September 14, 1908, with interest at 7 per cent per annum. (Pages 6-7.)

“That the Master ascertain and report what amounts of money, if any, from any sources connected with Presidio Mining Company business other than salaries the said William S. Noyes received since January 1, 1913, while in the employ of the Presidio Mining Company, including Gregg & Gleim tramway contract.”  
(Page 7.)

The store belonging to E. G. Gleim, doing business as the E. G. Gleim Company, has been at Shaf-

ter since the beginning of the mine, about 1885, when Noyes got Gleim to establish it there. It was intended originally that the store should be on the Presidio Mining Company's property, but as it subsequently transpired upon a survey and as it exists at the present time a corner of the building is on the company's property and the rest on ground belonging to Gleim. There are two other similar stores at Shafter. The Gleim store now and always has done the great bulk of the business with the Presidio Mining Company and with most of its employees. There was a time when water and light were furnished by the mine to the store at a charge (Deposition of Gleim, page 7), but since 1908 no charge has been made. At the present time on most articles which the company purchases from the store Gleim makes a price of cost to him at Shafter plus an overhead of 10 per cent. He makes that charge to the company, he says (Deposition, page 30), for the privilege of doing business. The account of the mine with the store is a very large account. I have said that the Gleim store has most of the business of the employees of the mining company. These employees are [110] Mexicans, who usually require goods or advances of cash prior to their payment by the mining company. There are several hundred employees of this sort, and doubtless their business is a valuable one. To facilitate it, an arrangement was necessary with the mining company which would protect the store. Prior to about February, 1914 (Exhibit 12), apparently the accounts were reported to the company and deducted from

the pay-roll. After that date a written order on the company was required. Later on, the method was for each employee to execute a power of attorney to Gleim's bookkeeper which would authorize him to sign orders upon the company against amounts due the miner. Out of this arrangement for a long time, the earliest date not being disclosed, but prior to 1908, Noyes, individually, drew a profit from E. G. Gleim, which likewise was not disclosed to the company or to its directors or stockholders. Noyes says (Tr. 192) that in the 90's Gleim paid him 4 or 5 per cent on the amount of these accounts, and this later became \$100 a month. Noyes' explanation of the reason for this payment to him is as follows (Tr. 167): "The miners and some of the mill men bought goods at the store and Mr. Gleim got me to collect his bills for him and to advise him what credits were good and what credits it would not be wise for him to grant, and to keep him posted on the safety of his bills." (See also Tr. page 175.) At another point in the evidence he speaks of it as a commission. Whatever may have been the fact in the earlier period, it is obvious that this explanation has no weight after 1901, when Noyes moved to California. After that date it is unlikely that he would have been able to have advised Mr. Gleim with respect to the credit of any particular Mexican laborer, and it is obvious that he did not do the work of collection. That work was done by the bookkeeper employed and paid by the Presidio [111] Mining Company. Mr. Gleim's explanation of the payment is that it was a gift to Mr. Noyes out of old



friendship (Deposition page 7). Being asked what Noyes did in return for this payment, he said (Deposition page 15): "The amounts simply went into the office and were collected."

So far as the transactions with the miners are concerned, it is obvious that the company was not harmed by the arrangement between Noyes and Gleim, and that the only one who was out money was E. G. Gleim. We may assume, however, that the prices he charged to the Mexicans would provide for the payment to Noyes, but this, again, does not particularly concern the company's interest. However, one may not be sure that the 10 per cent overhead would not include the \$100 paid to Mr. Noyes, who was, in effect, a salaried employee of the store. But apart from these considerations, the cases already cited are here applicable. It was not open to Noyes to fetter his discretion as superintendent as to where he should buy his supplies by going on the pay-roll of any particular merchant. The reason why Gleim paid him this money is perfectly apparent: In the first place, he probably was grateful to Noyes for a business which has been prosperous; secondly, the continued prosperity of his business was largely due to Noyes' favor, for the latter, being in absolute control of the mining company at Shafter, could have required Gleim to move his store from the company's property, could have taken the company's business away, and, most important of all, could have refused to have facilitated credits to the Mexican employees with direct payments from the mine to the store when each pay-roll was paid.



The last payment shown by the evidence to have been made to Noyes by Gleim was in October, 1913. I find, therefore, that there is due from William S. Noyes to the [112] Presidio Mining Company from September, 1908, to date, the following sums with interest to date of this report, at the rate of 7 per cent per annum:

	Interest to Nov. 30, 1918.		Total
Sept. 1908	\$100	\$71.16	171.16
Oct.    “	100	70.58	170.58
Nov.    “	100	70.00	170.00
Dec.    “	100	69.38	169.38
Jan. 1909	100	68.80	168.80
Feb.    “	100	68.22	168.22
Mar.    “	100	67.64	167.64
Apr.    “	100	67.06	167.06
May    “	100	66.48	166.48
June    “	100	65.90	165.90
July    “	100	65.32	165.32
Aug.    “	100	64.74	164.74
Sept.   “	100	64.16	164.16
Oct.    “	100	63.58	163.58
Nov.    “	100	63.00	163.00
Dec.    “	100	62.38	162.38
Jan. 1910	100	61.80	161.80
Feb.    “	100	61.22	161.22
Mar.    “	100	60.64	160.64
Apr.    “	100	60.06	160.06
May    “	100	59.48	159.48
June    “	100	58.90	158.90
July    “	100	58.32	158.32
Aug.    “	100	57.74	157.74

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Sept.	“	100	57.16	157.16
Oct.	“	100	56.58	156.58
Nov.	“	100	56.00	156.00
Dec.	“	100	55.38	155.38

	Forward	\$2800	\$1771.68	\$4571.68
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[113]

Interest to Nov. 30, 1918.      Total

	Forward	2800	1771.68	4571.68
Jan. 1911		100	54.80	154.80
Feb.	“	100	54.22	154.22
Mar.	“	100	53.64	153.64
Apr.	“	100	53.06	153.06
May	“	100	52.48	152.48
June	“	100	51.90	151.90
July	“	100	51.32	151.52
Aug.	“	100	50.74	150.74
Sept.	“	100	50.16	150.16
Oct.	“	100	49.58	149.58
Nov.	“	100	49.00	149.00
Dec.	“	100	48.38	148.38
Jan. 1912		100	47.80	147.80
Feb.	“	100	47.22	147.22
Mar.	“	100	46.64	146.64
Apr.	“	100	46.06	146.06
May	“	100	45.48	145.48
June	“	100	44.90	144.90
July	“	100	44.32	144.32
Aug.	“	100	43.74	143.74
Sept.	“	100	43.16	143.16
Oct.	“	100	42.58	142.58
Nov.	“	100	42.00	142.00

Dec.	"	100	41.38	141.38
Jan.	1913	100	40.80	140.80
Feb.	"	100	40.22	142.22
Mar.	"	100	39.64	139.64
Apr.	"	100	39.06	139.06
May	"	100	38.48	138.48
June	"	100	37.90	137.90

Forward	\$5800	\$3162.34	\$8962.34
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[114]

		Interest to Nov. 30, 1918.	Total
Forward	\$5800	\$3162.34	\$8962.34
July 1913	100	37.32	137.32
Aug. "	100	36.74	136.74
Sept. "	100	36.16	136.16
Oct. "	100	36.58	135.58
	\$6200	\$3308.14	

Total due P. M. Co. Nov. 30, 1918. . . . \$9508.14

## VI. TRANSACTION OF W. S. NOYES WITH GREGG & GLEIM REGARDING TRAM-WAY.

The decree orders a reference as follows:

"The nature and character of the transactions of said William S. Noyes with Gregg & Gleim on any ore hauling or other contracts between Gregg & Gleim and the Presidio Mining Company, with amounts received by Noyes and interest at 7 per cent. (Page 7.)

"That the Master ascertain and report what amount of money, if any, from any sources connected with the Presidio Mining Company busi-

ness other than salary, the said William S. Noyes received since January 1, 1913, while in the employ of the Presidio Mining Company, including the Gregg & Gleim tramway contract.'"

The facts in this regard will be briefly stated: Prior to 1913 or until a tramway was constructed, Gregg & Gleim had a contract to haul ore from the mine to the mill of defendant company at 85 cents a ton. There is nothing in the evidence to show that this was an unreasonable contract, nor is there anything to show that Gregg & Gleim paid any money to William S. Noyes on account of it. One of the improvements which was made at the time the cyanide process was installed was the building of a tramway from the mine to the mill, to take the place of the teams which had formerly hauled the ore. The company entered into a contract, which is in evidence, whereby Gregg & Gleim agreed to build the tramway and spend therefor up to \$16,000, the company to provide the remainder of the cost. Gregg & Gleim also had the right to operate that tramway for one year after its installation at 40 cents per ton of ore. The tramway was built, Gregg & [115] Gleim paying \$16,000 and the Presidio Mining Company, in round numbers, \$8,000 toward its construction. Shortly thereafter it was determined that the company had best exercise an option provided in the contract for purchase of the tramway on payment of the \$16,000 spent by Gregg & Gleim, and this was done, the company giving four notes of \$4000 each with interest at 10 per cent per annum. The com-

pany also concluded that it was advisable that they should take over from Gregg & Gleim their right to operate the tramway, and the contract provided that it was estimated that had Gregg & Gleim operated the tramway they would have carried 36,000 tons of ore at a profit of 25 cents per ton, or \$9,000, and the company accordingly agreed to pay them as commuted profits the sum of \$9,000 in installments at \$750 per month. This was done. Whether or not this arrangement was a wise one or not is not here in question. The explanation of the transaction by Mr. B. S. Noyes (Tr., page 450) seems to me a reasonable one, and I see nothing corrupt in it. There is nothing to show that W. S. Noyes ever received any money from Gregg & Gleim arising out of this matter. I find, accordingly, that there is nothing due from W. S. Noyes to the Company on this account.

## VII. OTHER TRANSACTIONS.

The decree also provides that the Master examine and report upon the following:

“The nature and character of the transactions of said William S. Noyes with any other persons having business relations with the Presidio Mining Company, with amounts received by him, and interest.” (Page 7.)

Various other transactions are referred to in the evidence, but there are none of a suspicious nature, and none in which it is shown that any money was paid to William S. Noyes. [116]

VIII. AMOUNTS EMBEZZLED BY L. OS-  
BORN.

The decree provides as follows:

“That L. Osborn account for all sums of money found by the Master as misappropriated by said L. Osborn from the Presidio Mining Company’s treasury, together with interest at the rate of 7 per cent per annum from date of misappropriation.” (Page 8.)

Following are the dates and amounts of the embezzlements in question with interest to date of this report, as required. It will be noticed that, following the findings of the decree, I have given no credit for the payment to the company by Osborn of \$5000 on February 25, 1913, and \$5689.75 on March 1, 1913; nor for the credit voucher for \$3500 given Osborn by Noyes on September 6, 1913. This left as the only credit certain payments by Osborn to the company in February, 1917 of \$1007; I have dropped the odd sum from both sides of the account to facilitate the calculation of interest:



		Interest to Nov. 30, 1918.			
		12 yrs.	4 mos.		
July 1906	\$ 150	12	"	\$129.50	
Sept. "	150	12	"	127.75	
March 1907	150	11	"	122.50	
June 1907	100	11	"	79.90	
Aug. "	100	11	"	78.74	
Dec. "	100	10	"	76.38	
Jan. 1908	100	10	"	75.80	
Feb. "	100	10	"	75.22	
Mar. "	100	10	"	74.64	
Apr. "	100	10	"	74.06	
May "	100	10	"	73.50	
June "	100	10	"	72.92	
July "	100	10	"	72.34	

Interest to Nov. 30, 1918.		
Aug. 1908	100	10 " 3 "
Oct. "	100	10 " 1 "
Forward	\$1650	
		\$1275.59
Forward.....	\$1650	\$1275.59
Dec. 1908	200	9 yrs. 11' mos. 138.76
Jan. 1909	100	9 " 10 " 68.80
Feb. "	200	9 " 9 " 136.44
Mar. "	250	9 " 8 " 169.10
Apr. "	100	9 " 7 " 67.06
May "	100	9 " 6 " 66.50
June "	200	9 " 5 " 131.85

		Interest to Nov. 30, 1918.			
July	1909	100	9	" 4 "	\$65.32
Aug.	"	100	9	" 3 "	64.74
Sept. & Oct. '09		400	9	" 1 "	254.32
Nov.	1909	125	9	"	78.75
Dec.	"	300	8	" 11 "	187.25
Jan.	1910	100	8	" 10 "	61.80
Feb.	"	300	8	" 9 "	183.75
Apr.	"	300	8	" 7 "	182.00
May	"	200	8	" 6 "	119.02
June	"	300	8	" 5 "	176.75
July	"	100	8	" 4 "	58.32
Aug.	"	200	8	" 3 "	115.51
Sept.	"	200	8	" 2 "	114.34

## Interest to Nov. 30, 1918.

Oct. 1910	200	8	"	1	"	113.17
Nov.	300	8	"			168.00
Dec.	300	7	"	11	"	166.25
Jan. 1911	300	7	"	10	"	164.50
Feb.	400	7	"	9	"	216.97
Mar.	400	7	"	8	"	214.64
Apr.	200	7	"	7	"	106.19
May	300	7	"	6	"	157.50
June	300	7	"	5	"	155.75
July	300	7	"	4	"	154.00
Aug.	300	7	"	4	"	152.25
Forward	\$8825					<hr/> \$5485.09

Forward		Interest to Nov. 30, 1918.			
	\$8825	7 yrs.	2 mos.		\$5485.19
Sept. 1911	300	7 "	1 "		150.50
Oct. "	300	7 "			148.75
Nov. "	400	7 "			196.00
Dec. "	325	6 "	11 "		158.18
Jan. 1912	550	6 "	10 "		263.00
Feb. 1912	300	6 "	9 "		141.75
Mar. "	300	6 "	8 "		140.00
Apr. "	300	6 "	7 "		138.25
May "	300	6 "	6 "		136.50
June "	350	6 "	5 "		157.20
July "	400	6 "	4 "		177.32
Aug. "	650	6 "	3 "		284.37
Sept. "	400	6 "	2 "		172.66

		Interest to Nov. 30, 1918.	
Nov. 1912	300	6 "	126.00
Dec. "	200	5 " 11 "	82.76
Jan. 1913	100	5 " 10 "	40.80
Apr. "	900	5 " 7 "	351.75
			<hr/>
			\$8,350.98
CREDITS.			
Feb. 3, 1917	\$1000	1 yr. 10 mos.	\$128.30
			<hr/>
Balance	\$14,200		\$8,222.68



# SUMMARY.

Total amount due Presidio Mining Co. from L. Osborn,	
of moneys embezzled, Nov. 30, 1918 . . . . . Principal	\$14,200.
Interest	8,222.68
	<hr/>
	\$22,422.68
	<hr/>

## IX. RECAPITULATION.

Recapitulating, for convenience, the foregoing findings, we have the following sums owed to the Presidio Mining Company on November 30, 1918, by the persons named:

## 1. William S. Noyes:

Section 5	\$28,177.70	
Salary and fees	9,335.00	
Bowers	4,811.15	
Boarding-house	410.95	
E. G. Gleim Co.	9,508.14	\$52,242.94

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## 2. L. Osborn:

Embezzlements	\$22,422.68	
Salary and fees	5,920.00	\$28,342.68

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3. B. S. Noyes, Salary and fees	2,110.00
4. J. W. F. Peat                      do	4,810.00
5. L. M. Doherty, Director's fees	45.00

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Grand Total	\$87,550.62
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## X. COMPLAINANT'S DISBURSEMENTS.

The decree on this question reads as follows:

“That during said accounting before said Master in Chancery evidence be submitted by complainants as to all costs and expenses of every kind and nature actually incurred by *them investigating* the affairs of the Presidio Mining Company in all its ramifications, and of the services rendered personally by complainants and their counsel in connection therewith. (Decree pages 8, 9).

“That the allowance of costs herein including the moneys expended by complainants in investigating the affairs of said Presidio Mining Company, allowance for personal services and counsel fees, and the costs of reference be deferred until the making of the final decree herein.” (Pages 8, 9.)

There is some question as to how much is by this language committed to the Master. The language quoted follows the general direction of the Court to the Master to ascertain the [120] evidence with his opinion and findings. In the first place it seems to be agreed by the parties that while the Master should find the amount which has been expended for counsel fees, he should not advise the Court, either by findings or opinion, as to the amount which the Court should allow. No evidence was given on this question and no argument offered by either party. I shall, therefore, make no finding,—indeed no allowance can be made except for services to date even by the Court. I shall, however, point out that certain services of counsel in my opinion are not allowable in this particular litigation. Referring to the matter of “costs of reference,” those costs, so far as they pertain to reporters’ expense and the like, are here given, but there will be in addition the Master’s fee, not yet determinable, and possibly further clerk’s fees, witness fees, and the like not here set forth.

It has, however, seemed to me necessary and fairly contemplated by the language of the decree that in stating the costs and disbursements shown by

the evidence I should group them under various heads according to their character, There will be, for example, a group of Taxable Costs. These are the costs which are payable in litigation of this sort equally with all lawsuits to the successful party by the unsuccessful party. They are sometimes called "costs as between party and party," and would here be payable to the plaintiff Overton by the defendants other than the Presidio Mining Company. Such costs, under the rules of this court, are determined by the clerk of the court under a procedure laid down by the rules. In determining them here in advance of the clerk's action which has not yet taken place I have no intention of usurping the clerk's jurisdiction. It is necessary for me, however, to make such a determination of what are taxable costs, in my opinion, in order to know what are the costs allowable under the next group, that is, the [121] costs payable by the Presidio Mining Company to plaintiff Overton out of the funds which has been made available to that company by this litigation. If, however, the clerk, or the Court on appeal from the clerk's decision, shall differ from my determination on the question of taxable costs, the items of difference will all fall within the second group payable by the defendant company with the exception of a few items of taxable costs in the ancillary receivership proceedings in Texas. I have included them as taxable costs in this case, because it seemed to me obviously convenient and desirable that they should be settled here rather

than be taxed in the *pro forma* proceedings in Texas; but if I am mistaken in this determination those expenses will not go into the second class, but will be entirely eliminated from the determination of this Court and be passed upon by the Court of ancillary jurisdiction.

The second group of allowable disbursements are those which are nontaxable against the individual defendants, but which, in accordance with the principles of courts of equity administering a fund, will be paid to plaintiff by the Presidio Mining Company out of the fund which is here recovered for its benefit from the defendants. They are of the same character as payments which will be made to counsel and the payment to the Master for his services.

The two remaining classifications of the disbursements made by Captain Overton are those disbursements which, in my opinion, are not allowable and the disbursements made for counsel services. As to the former class, it will be noted that the Master differs quite radically from complainant's counsel as to the principles upon which allowances of disbursements are made by a court of equity. Complainant Overton has spent a great deal of money and much of his time in [122] a highly meritorious and successful service in behalf of this corporation. The theory of complainant's counsel seems to have been that he would be reimbursed for his services and for his disbursements in everything which in good faith he undertook in and about the litigation against these defendants.

The language of the decree above quoted gives some justification for this point of view. It is not, however, a necessary interpretation of the decree, and in view of the fact that the law is clearly otherwise I shall not so construe it. The law on this subject is sufficiently and very clearly expressed by the Supreme Court of the United States in *Trustees vs. Greenough*, 105 U. S. 527. That was a bill by a bondholder and, therefore, a creditor's bill, while this is a stockholder's bill. I cannot, however, see any distinction arising out of this fact which would extend to the application of the principles of that decision to this case. The lower court there allowed the complainant a sum of money for ten years' personal services, and another sum of money for his railroad fares and hotel bills in and about the business of the litigation. I shall not quote or discuss the opinion, which should be read. It is sufficient to say that the Supreme Court denied the two allowances mentioned, and hence it follows that I have not been able to see my way clear to allow the complainant Overton his railroad fare or the sum claimed for his personal services equated at his living expenses reasonably estimated. I have with some doubt allowed him, under the head of "nontaxable costs payable by the company" a sum of money for the services of Mrs. Overton in the examination of the books and records of the Presidio Mining Company and in assisting counsel in all the numerous duties that attended this litigation. It may, of course, be said that she should be placed in the same category as her husband, who



was doing like work, and perhaps this is so. But, on the other hand, if an accountant [123] had been employed for the like service his bill for services would have been allowed, and I have assumed that it was proper that this necessary assistance should be recognized and allowed for. I have been the more ready to do this because although it has been a very difficult and burdensome litigation, only one attorney, Mr. Rose, has been employed in handling the main case. On the principle of the Greenough case I have likewise disallowed costs, disbursements and counsel fees attending a number of other suits besides this one. It is true that if ancillary or auxiliary suits were really necessary to bring the recovered fund into the treasury of the corporation the allowances should cover the expenses of such proceedings. But in my view the other litigation which was here shown had no necessary relation to the present litigation. There is, for example, a slander suit referred to by W. S. Noyes against Captain Overton. It seems that while the latter was in Texas investigating the affairs of this company he is alleged to have used slanderous words with respect to the plaintiff and was accordingly sued *in tort* in the courts of that state. That suit is, of course, incidental to this entire litigation, but it does not benefit the Presidio Mining Company. If, during the trial, Captain Overton, in anger, had committed battery upon Mr. Noyes, or *vice versa*, it could hardly be urged that the expense of such civil litigation should be paid by the stockholders of the company. It is one of the misfortunes that may

occur to anyone who becomes exposed to a lawsuit, and in the contemplation of the law, though not of course as a fact, reimbursement is made in the cost allowed in such proceedings. So, also, there were suits to require the directors of this company to post certain notices, and a suit to compel the transfer of stock to Captain Overton so as to assist him in securing election as a director. It seems to me that the result of this action would have been the same if those suits [124] had not been brought. Likewise, criminal proceedings were initiated against W. S. Noyes for embezzlement, and special counsel employed. The only justification claimed for asking reimbursement of this expense is that the information secured in the trial of that criminal case has been of service in this case. That might be true, and yet the same information might have been obtained in the ordinary way by deposition before trial or upon the trial of the case with which we are concerned. While the services of complainant and his counsel have been meritorious and their conduct of the litigation energetic, there is room for suspicion that times it has been rather hot-headed and overzealous, and that expenses have been incurred that were unnecessary and improperly to be charged against the company in this case.

Following are the disbursements, grouped in the four groups which I have referred to:

(A) TAXABLE COSTS.

These costs are payable to plaintiff W. S. Overton by the defendants other than the Presidio Min-

ing Company. This determination subject to change on clerk's ruling hereafter.

1. Items from Exhibit 13:

Paid to clerk .....	\$ 124.20
Paid to marshal .....	104.50
Verification .....	4.75
W. H. Willis, Reporter ....	30.00
W. H. Willis, Reporter, (Tr. 404) .....	288.75
Gagan & Lehner, Reporters	10.00
Gagan & Lehner, Reporters, (Tr. 404) .....	49.60
Gardiner, witness fees .....	3.00
Herger, witness fees .....	3.00
Davis, witness fees .....	3.00
Clause, witness fees .....	9.00
Clause, mileage, 200 mi. ...	20.00
Kniffin, 8 days witness .....	24.00
Kniffin, mileage, 200 mi.....	20.00
Lasky, witness fees and mile- age .....	41.00
Bond Premiums .....	110.00
Klink, Bean & Co. ....	1172.50
Printing brief .....	174.50
Recording fees .....	7.00
Copy deed. ....	10.00

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Total (forward) .... \$2208.80

	Bro't forward .....	\$2208.80
2.	Items from Exhibit 14:	
	Premium, bond .....	\$ 25.00
	Verification affidavits .....	.95
	Recording decree .....	15.00
	Clerk .....	17.30
	Certified copies .....	26.75
	Premium, bond .....	25.00
	Serving orders .....	3.50
	Marshal .....	12.00
	Total .....	125.50
3.	Items from Exhibit 39:	
	Master's bill for reporter and transcription of original of evidence .....	\$ 222.00
	Expense of depositions (Tr. 682) .....	40.55
	Counsel's expense on deposi- tion (Tr. 684) .....	160.11
	Total .....	422.66
4.	Items subsequent to trial from Master's records:	
	Master's bill for reporter's attendance and transcrip- tion of original .....	115.90
	Gagan & Lehner, for report- ing argument .....	35.00
	Total .....	150.90
	Grand Total .....	\$2907.86

(B) NONTAXABLE COSTS AND DISBURSEMENTS, ALLOWABLE.

These disbursements are payable to plaintiff Overton by the Presidio Mining Company. They are the expenses other than the ordinary taxable costs, that the Presidio Mining Company might properly have incurred, had it performed its duty and brought this suit against the other defendants. since they are not taxable, they are not payable by those defendants; but they are payable by the company as a reimbursement to plaintiff Overton as a matter of equity. They include disbursements [126] reasonably related to the recovery of the funds here the subject of accounting.

1. Items from Exhibit 13:

Clause, balance expenses	
from El Paso, not taxable	\$133.00
Kniffen, balance not taxable	95.45

Total .....	\$ 228.45
2. Exhibit 22, Mead, Counsel's Expense .....	\$ 23.00
3. Exhibit 24, 80% telegrams and telephones .....	137.25
4. Exhibit 25, 80% stationery, etc., 118.46 .....	94.76
5. Exhibit 25, Miscellaneous .....	91.62
6. Exhibit 28, Mrs. Overton—Investigation of books and assistance to counsel .....	1464.00
7. Exhibit 39, Mrs. Overton, same .....	236.00

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8.	Exhibit 39, Master in Chancery, copy of transcript .....	128.10
9.	Exhibit 39, Klink, Bean & Co., accountants .....	100.00
10.	Master in Chancery, copy of transcript paid after hearing closed ....	87.90
11.	Gagan & Lehner—Copy of argument .....	21.00
		<hr/>
	Total .....	\$2612.08

(C)    DISBURSEMENTS BY COMPLAINANT  
NOT ALLOWED.

These are the disbursements made by plaintiff that have no reasonable relation to the recovery of the fund:

1.	Exhibit 14, printing decree and opinion .....	\$ 60.50
2.	Exhibit 15, all .....	245.45
3.	Exhibit 16, all .....	22.45
4.	Exhibit 17, all .....	11.50
5.	Exhibit 18, all .....	277.85
		<hr/>
	Forward .....	\$ 617.75

[127]

	Bro't Forward .....	\$ 617.75
6.	Exhibit 19, all .....	60.00
7.	Exhibit 20, all .....	69.50
8.	Exhibit 21, 20% counsel fees .....	656.68
9.	Exhibit 21, Expenses Rose .....	146.82
10.	Exhibit 22, Fees McNutt .....	600.00
11.	Exhibit 22, Fees Mead .....	100.00
12.	Exhibit 22, Expenses Mead .....	62.50



13.	Exhibit 23, 20% stenographer's expense .....	233.50
14.	Exhibit 24, 20% telegrams, etc. ....	34.32
15.	Exhibit 25, detective services .....	27.20
16.	Exhibit 25, 20% stationery, etc. ....	24.70
17.	Exhibit 26, Overton's railroad fares, on authority Trustees vs. Greenough, 105 U. S. 530, 558 .....	985.51
18.	Exhibit 27, Compensation Overton's services, same authority .....	4450.00
19.	Exhibit 28, Mrs. Overton, railroad fares .....	628.61
20.	Exhibit 39, Compensation Overton's services .....	295.00
Total .....		<hr/> \$8992.09

(D) DISBURSEMENTS BY COMPLAINANT TO COUNSEL AND TO STENOGRAPHERS.

I am required to find the amount of such disbursements, the Court reserving to itself the determination of the total reasonable counsel fees. It is not usual for the client to pay the charges of his attorney's stenographer; and therefore the Court's judgment has generally been exercised, and naturally would here be exercised, upon the facts showing the worth of counsel's services, including all his office facilities. When counsel fees are allowed, the following sums out of the gross amount allowed will be specifically repayable by the company to plaintiff Overton: [128]

1. W. F. Rose, July, 1915 to June, 1918, \$3283.38, 80% upon the present liti- gation, Exhibit 21 .....	\$2626.70
2. R. P. Henshall, advisory counsel, Ex- hibit 22 .....	500.00
3. C. E. Mead, counsel in Texas, Exh. 22	200.00
4. Stenographers, Exh. 23, \$1167.50, of which 80% was on this suit .....	934.00
5. Exhibit 39, W. F. Rose, counsel fees	120.00
6. Exhibit 39, W. F. Rose, stenogra- pher's expense .....	144.00
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Total .....	\$4525.59

The parties may have until November 20, 1918, to file with the Master objections in writing to the foregoing draft report, which objections should be served in the usual way upon opposing counsel. Thereafter, the Master will consider the objections and settle, sign and file his final report, of which the parties will be notified.

Dated November 7, 1918.

H. W. WRIGHT,  
Master in Chancery. [129]

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### Supplemental Report.

In accordance with the rules and practice of this court the foregoing draft report was announced on November 7, 1918, and counsel for the parties, namely, William F. Rose, Esq., for plaintiffs, and Messrs. Harding & Monroe and J. J. Dunne, Esq., for defendants, were notified thereof and called upon to file objections to the report in writing with the Master within a time named. Thereafter,

within the period of time so granted, the attorneys for the defendants filed objections in writing to the Master's Report on November 25, 1918. Attorney for the plaintiff has filed no objections. Defendants objections are herewith separately returned.

The said objections have been duly considered and are now overruled, and the said draft report is now settled, signed and filed as my final report herein and the parties notified by mail thereof on this 30th day of November, 1918.

H. M. WRIGHT,  
Master in Chancery.

[Endorsed]: Filed Nov. 30, 1918. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[130]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN, on Be-  
half of Themselves and Other Minority  
Stockholders of the PRESIDIO MINING  
COMPANY Named in this Complaint,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Stipulation Agreeing upon Receiver.**

WHEREAS, in the above-entitled matter, against the objections and exceptions of the above-named defendants, said Court is about to give and make its order that a receiver be appointed herein; and

WHEREAS, it is the intention of said defendants in due and orderly course thereafter to perfect their appeal from said order appointing such receiver; and

WHEREAS, said defendants do not desire this stipulation or anything herein contained to be, or to be construed to be any waiver, qualification, limitation or restriction whatever upon their said appeal from said order;

NOW, THEREFORE, the premises considered, understood and agreed to, it is hereby STIPULATED and AGREED by and between the parties to the above-entitled action that [131] Honorable Walter B. Maling be appointed receiver herein, upon giving a bond in such amount as may be fixed by the Court, and

IT IS hereby FURTHER STIPULATED and AGREED that neither this stipulation or anything herein contained shall in any way affect or abridge the aforesaid appeal, but, on the contrary, said appeal and all rights of said defendants therein are hereby expressly reserved, conserved and continued in the same force and effect as if this stipulation had not been entered into.

Dated this 13th day of February, A. D. 1918.

WM. F. ROSE,

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Solicitors for Complainants.

R. T. HARDING and

HENRY E. MONROE,

Solicitors for Defendants.

J. J. DUNNE,

Of Counsel for Defendants.

[Endorsed]: Filed Feb. 16, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[132]

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In the Southern Division, District Court of the  
United States, in and for the Northern District  
of California, Second Division.

No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Receiver's Bond.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, Walter B. Maling, of the city and county

of San Francisco, State of California, as principal, and National Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, as surety, are held and firmly bound unto the United States of America, in the sum of Ten Thousand Dollars (\$10,000), lawful money of the United States of America, to be paid to the said United States of America, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of February, 1918.

THE CONDITION of the above obligation is that an order was made on the 20th day of February, A. D. 1918, by the District Court of the United States in and for the Northern District of California, Second Division, appointing the above-named principal Receiver of the Presidio Mining Company, including the Presidio Mine, known as Section Eight, Presidio County, State of Texas, and Section Five adjoining said Section Eight, together with the Presidio mill, and all improvements, appurtenances and equipment connected with said Sections Eight and Five, and all the real and personal property of said corporation of every kind and nature wherever situated, with full power to act in all particulars in the place and stead of the directors and officers of said [133] corporation, pursuant to law in such cases made and provided, and after proper ancillary proceedings have been had



where and when the same shall be required; to take immediate and exclusive possession of said Presidio Mining Company, its office, Room 209, 255 California Street, San Francisco, California, its assets, books, records and papers, to continue, control, carry on and conduct its business in all its ramifications, including the mining, milling, handling its ores, selling its bullion, and to discharge the duties obligatory on said corporation;

To operate said Presidio Mine in and on Section 8, and Section 5, the milling and reduction plant of said corporation, and manage said properties in such a manner as will in his judgment produce the most satisfactory results consistent with the discharge of the duties imposed thereon; to collect and receive all the income therefrom, with full power in his discretion to employ, discharge, fix compensation of any and all agents, attorneys, managers, superintendents and employees as may be necessary to aid in the discharge of his duties;

To make such investigations, institute and prosecute such suits, as may be necessary in his judgment for the recovery of moneys or other assets belonging to said corporation, or for the proper protection of the said properties and trusts vested in him, and to likewise defend all such actions instituted against him as such Receiver, the prosecution or defense of which in his judgment will be necessary for the proper protection of the said property placed in his charge, or benefit, or increase the assets of said corporation; to take any and all steps by ancillary or other legal proceedings required by law in the

proper courts and jurisdiction to obtain full and complete authority to carry out the orders and provisions contained in said order.

NOW, THEREFORE, if the said Walter B. Maling shall faithfully discharge the duties of his office as RECEIVER [134] in the said action and shall obey the orders of the Court herein according to law, then this obligation to be void, otherwise to remain in full force and effect.

WALTER B. MALING. (Seal)  
NATIONAL SURETY COMPANY,  
[Seal] By FRANK L. GILBERT,  
Its Attorney-in-fact.

The rate of premium on this bond is \$5.00 per thousand; the total amount of premium charged is \$50.00 per annum.

(2—\$.25 Internal Revenue Documentary Stamps attached.)

Cancelled by National Surety Co. New York, Feb.  
21, 1918.

This bond is approved this 23d day of February,  
1918.

WM. C. VAN FLEET,  
U. S. Dist. Judge.

State of California,  
City and County of San Francisco,—ss.

On this 21st day of February in the year one thousand nine hundred and eighteen, before me Genevieve S. Donelin, a Notary Public in and for the city and county of San Francisco, State of California, residing therein, duly commissioned and

sworn, personally appeared Frank L. Gilbert known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of the National Surety Company, the corporation described in the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and the said Frank L. Gilbert acknowledged to me that he subscribed the name of the National Surety Company thereto as principal and his own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal]                      GENEVIEVE S. DONELIN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed February 23d, 1918 at 11  
o'clock and 30 min. A. M. W. B. Maling, Clerk.  
By J. A. Schaertzer, Deputy Clerk. [135]

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(Title of Court and Cause.)

**Order Permitting Receiver to Invest Surplus Funds  
in His Hands in the New (Third) Liberty  
Loan.**

Walter B. Maling, Receiver in the above-entitled actions, having petitioned this Court for permission to invest surplus funds in his hands, to the extent of

at least Twenty-five Thousand (25,000) Dollars, in the present (Third) Liberty Loan;

And it appearing that he has on hand the sum of at least Ninety-three Thousand Two Hundred and Forty-seven and 60/100 (93,247.60) Dollars, and that at least Fifty Thousand (50,000) Dollars of said sum is not needed for present purposes of said Receivership;

And it further appearing that although said Receiver has only petitioned for permission to invest Twenty-five Thousand (25,000) Dollars of said amount in said Liberty Loan, that the parties to said action have consented that he may invest Fifty Thousand (50,000) Dollars of said surplus in the said Liberty Loan;

And it appearing to be for the best interests of said receivership that said investment be made;

IT IS HEREBY ORDERED that said Receiver have and he is hereby given permission to invest not to exceed the sum of Fifty Thousand (50,000) Dollars in said Liberty Loan.

Done in open court this 12th day of April, One Thousand Nine Hundred and Eighteen (1918).

WM. C. VAN FLEET,  
Judge.

We hereby consent to the above order.

WM. F. ROSE,  
Attorneys for Plaintiffs.  
R. T. HARDING and  
HENRY E. MONROE,  
Attorneys for Defendants.

[Endorsed]: Filed April 12, 1918. Walter B. Maling, Clerk. [136]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

PRIMARY SUIT.

No. 196—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

In the District Court of the United States, for the Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Petition for Permission to Purchase New Engine at Mine.**

Walter B. Maling, Receiver in the above-entitled actions, hereby petitions the Court for permission to purchase a new engine at the Mine, and in that behalf states as follows:

That situated on the mining property of the Presidio Mining Company is the reduction works of the Company, consisting of a fifteen-stamp mill for reducing the ores, other crushing and [137] pulverizing machinery, and also transportation machinery, all forming a part of the mill and cyanide plant in which the ores are reduced and treated for the purpose of extracting the silver.

That it requires to run all of this machinery about 240 H. P.

That for the purpose of furnishing power there is situated at the mill and installed therein three engines, two gas engines, one called the small engine, rated at 87 H. P. at the elevation of the Mine, another engine, called the large engine, rated at the elevation of the Mine at 122 H. P., and in addition there is an old steam engine which is used when the gas engines are in need of repair.

At the present time the small engine is carrying a load of about 100 H. P. and the large gas engine a load of about 140 H. P., and thus the 240 H. P. necessary to run all of the machinery is furnished, both engines, however, being overloaded.

It is not practicable to use the old steam engine on account of the cost as it requires a large amount



of fuel oil to keep it running and it is difficult to get the amount of oil necessary for fuel to run this engine. Besides that, the Receiver is informed that the steam engine is unsafe.

The overloading of the two gas engines causes frequent accidents to the engines and compels the mine to shut down at inconvenient times and for unnecessarily long periods. Besides the overloading of these gas engines takes an increased amount of fuel, which could be avoided by putting in a new large engine of 140 H. P., keeping the small engine as a reserve in case of a breakdown of either large engine and doing away with the steam engine entirely.

These conditions at the Mine with reference to the [138] power plant have caused in the last two years two serious breakdowns, the aggregate cost of the two breakdowns to the Company amounting to the sum of about Fifteen Thousand (15,000) Dollars.

That your Receiver has investigated the matter and is informed and believes that at present prices a new 140 H. P. engine, together with the necessary additional machinery to accompany it, can be purchased and installed at a cost not to exceed Twenty Thousand (20,000) Dollars.

WHEREFORE your Receiver prays that he be permitted to expend the sum of Twenty Thousand

(20,000) Dollars, or as much as is necessary, to install a new 140 H. P. gas engine at the Mine.

WALTER B. MALING,  
Receiver.

FRANK R. WEHE,  
Attorney for Receiver.

We, the undersigned, attorneys for the parties to the above-entitled actions, hereby admit service on us of a copy of the above petition, and hereby consent that the matter may go on the calendar for Monday, June 3d, 1918.

WM. F. ROSE,  
Attorney for Plaintiffs.  
R. T. HARDING and  
HENRY E. MONROE,  
Attorneys for Defendants.

[Endorsed]: Filed May 31, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [139]

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(Title of Court and Causes.)

**Order Permitting Receiver to Purchase New  
Engine at Mine.**

Walter B. Maling, Receiver in the above-entitled actions, having petitioned the Court for permission to purchase a new engine at the Mine, and it appearing that all of the allegations of said petition are true and that it is necessary at this time to purchase and install in the mill at the Mine a new 140 H. P. gas engine at an expense of not to exceed Twenty Thousand (20,000) Dollars, and both parties to the action consenting thereto;

IT IS HEREBY ORDERED that the Receiver be and he is hereby permitted and authorized to purchase and install at the mill at the Presidio Mine, at Shafter, Presidio County, Texas, a new gas engine of 140 H. P. at an expense of not exceeding Twenty Thousand (20,000) Dollars, and he is hereby authorized to pay the purchase price of said engine and all necessary adjuncts thereof and its installation out of the money of said Presidio Mining Company in his hands.

Done in open court this 3d day of June, one thousand nine hundred and eighteen (1918).

WM. C. VAN FLEET,  
Judge.

[Endorsed]: Filed Jun. 6, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [140]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

PRIMARY SUIT.

No. 196—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

In the District Court of the United States, for the  
Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Petition for Appointment of Auditor.**

Walter B. Maling, Receiver in the above-entitled matter, hereby petitions the Court to appoint an auditor for the purpose of auditing the books and accounts of the Presidio Mining Company, and in that behalf states as follows:

That Capt. Wm. S. Overton, a Director and Stockholder in the Presidio Mining Company, has served upon the Receiver a written request for the appointment of an auditor for the purpose [141] of auditing the books and accounts of the Presidio Mining Company, from a period prior to the commencement of the receivership, and it is assumed during the receivership;

WHEREFORE said Receiver prays that this Court make an order authorizing him to appoint an auditor, with full power to examine the books, accounts and reports of the Presidio Mining Com-

pany from such time prior to the receivership as shall be designated by the parties up to and including the whole time of the receivership.

WALTER B. MALING,

Receiver, Presidio Mining Company.

FRANK R. WEHE,

Attorney for Receiver.

[Endorsed]: Filed Nov. 2, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [142]

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(Title of Court and Causes.)

**Order Permitting Receiver to Appoint Auditor.**

Walter B. Maling, Receiver herein, having petitioned this Court for the appointment of an auditor for the purpose of auditing the books and accounts of the Presidio Mining Company, and all of the parties to said action having consented thereto;

IT IS HEREBY ORDERED that the Receiver select and appoint a competent, expert accountant for the purpose of examining and auditing all of the books and accounts of the Presidio Mining Company wherever situated, from such time prior to the Receivership as shall be designated in writing by any of the parties to this action up to and including such time of the Receivership as has expired at the time of such examination.

Done in open court this 13th day of January, one thousand nine hundred and nineteen (1919).

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Jan. 14, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[143]

### Report of Auditors.

Oct. 4, 1919.

New York	HASKINS & SELLS	San Francisco
Chicago		Los Angeles
Detroit	Certified Public Accountants	New Orleans
Saint Louis	Cable Address "Haskells"	Seattle
Boston		Denver
Cleveland	Crocker Building	Atlanta
Baltimore	San Francisco	Watertown
Pittsburgh		London

October 3, 1919.

Mr. Walter B. Maling,  
Receiver, Presidio Mining Company,  
San Francisco, California.

Dear Sir:

Pursuant to engagement, we have audited the books and accounts of the Presidio Mining Company for the period from April 1, 1906, to December 31, 1917, and submit herewith eleven pages of comments and the following described exhibits:

#### EXHIBIT

"A"—General Balance Sheet at August 31, of Years 1906, to 1913, Inclusive, and at December 31, of Years 1914, to 1917, Inclusive.

"B"—Statement of Income and Profit & Loss, by Periods, from April 1, 1906, to December 31, 1917.



“C”—Statement of Payments made to E. G. Gleim Company During the Period, April 1, 1906, to December 31, 1917.

Yours truly,

HASKINS & SELLS. [144]

PRESIDIO MINING COMPANY

COMMENTS ON THE AUDIT

FOR THE PERIOD FROM APRIL 1, 1906, TO  
DECEMBER 31, 1917.

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PLANT PROPERTY.

MINE.

All San Francisco records of the Company prior to April, 1906, were destroyed by the fire of April 18, 1906, and when new books were opened the Company omitted to set up the capital stock, as well as the mine account.

Subsequently, entries were made on the books charging the mine \$175,000.00, and crediting Capital Stock \$150,000.00, and Profit & Loss \$25,000.00. The Internal Revenue Agent examining the accounts of the Company in connection with Income Tax Returns disallowed the credit to Profit & Loss, and as we have been unable to obtain evidence to indicate the consideration given for the mine or the Capital Stock, for the purpose of this report we have stated the value of the Mine (Section 8) as \$150,000.00.

According to the interlocutory decree No. 196 in the District Court of the United States in and for the Northern District of California, Second Division, “*W. S. Overton et al. vs. Presidio Mining*

Company et al.," dated February 16, 1918, it has been adjudged that Section No. 5 (ownership of which is claimed by W. S. Noyes), belongs to the Presidio Mining Company. The cost value of Section 5, according to the report of the Master in Chancery in the litigation referred to amounts to \$25,099.32. We have therefore charged this amount to Mine account, and credit W. S. Noyes, whose account is included in Exhibit "A" under the caption of Contingent Assets—Accounts Receivable.

### BUILDINGS, MACHINERY, AND EQUIPMENT

The following items comprise this account: [145]  
Presidio Mining Company

Comments on the Audit, etc.

Capital expenditures 1902 to 1906,....	\$124,247.73
Sundry capital assets.....	38,951.66
Mill .....	31,037.91
Cyanide installation .....	33,582.39
Rope tramway .....	24,772.34
Surface track .....	7,359.25
Mine power house.....	46,027.19
Club house #2, and Garage.....	3,112.64
New hoist shaft.....	2,986.80
Drill sharpening machine.....	2,114.88
Oliver filter .....	4,375.96

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Total.....\$318,568.75

Capital expenditures prior to 1916, as shown by the records, were eliminated entirely on the books of the Company, and are now taken up again in order to establish the value of Plant property.

Subsequent to 1906, the Company's practice has been to charge capital expenditures partly to asset accounts and partly to operating expenses. All items charged by the Company to expenses are shown above as sundry capital assets. They consist of machinery and of material and supplies for the construction of buildings.

All vouchers for capital expenditures subsequent to April 1, 1906, have been examined by us except those aggregating \$10,507.81 for the construction of the rope tramway. This amount represents part of \$16,000.00 advanced by Gregg & Gleim, and while we were not able to inspect the receipted bills we were allowed to inspect the account of the Presidio Mining Company as shown on Gregg & Gleim's ledger. The findings are summarized as follows:

Rope tramway contract (Arthur Painter	
Tramway Company) .....	\$ 7,106.15
Lumber .....	2,015.33
Freight .....	1,383.18
Sundries .....	3.15
<hr/>	
Total.....	\$10,507.81

### WORKING ASSETS.

According to the Company's practice, physical inventories of the various working assets were taken by employees of the Company as of December 31, 1917, and priced at cost. We tested the prices and verified the extensions and footings. [146]

## Presidio Mining Company

Comments on the Audit, etc.

## CURRENT ASSETS.

## CASH.

The cash on hand was verified by count, and cash on deposit by verifications obtained from the depositories.

All cash receipts at San Francisco consisting of the net proceeds from silver bullion have been checked with the returns of Selby Smelting and Lead Company. Returns for bars No. 5690 to No. 6302 for the period beginning November, 1911, and ended January, 1914, were not on file, but copies were obtained from Selby Smelting and Lead Company. All bullion shipments have been accounted for, and the net proceeds deposited in the bank.

The following deposits appear on the bank statements of the Wells Fargo Nevada National Bank without corresponding cash-book entry:

March 26, 1910.....	\$ 6,000.00
February 25, 1913.....	5,000.00
March 1, 1913.....	5,689.75

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Total.....\$16,689.75

The first item is applied against a check of \$6,000.00 drawn March 4, 1910, without cash-book entry. The balance of \$10,689.75 represents payments made by Mr. W. S. Noyes which we have credited to his account. (See page 8 of report of Master in Chancery.)

Under date of September 30, 1913, the cash-book shows an entry of \$3,500.00 for sundry receipts, which were included by the Company in the accounts of the fiscal year ended August 31, 1913, while a like amount was entered as a disbursement and charged to operating account September 6, 1913, and included in the accounts of the fiscal year ended December 31, 1914. Both entries, in our opinion, are fictitious and have been eliminated.

Cancelled checks and bank statements from April, 1906, to December, 1912, were missing. Receipted bills for this period are on file with the exception of some cancelled drafts, and amounts transferred to [147] Shafter, which have been verified with the

Presidio Mining Company

Comments on the Audit, etc.

records kept at the mine. An examination of disbursements and cancelled checks disclosed a shortage of \$15,207.00, which amount was withdrawn during the period from April, 1906, to January, 1913. The details consist of substantially the same amounts shown in Report of Master in Chancery, pages 30, 31, and 32. Of this shortage, \$1,007.00 was paid by L. Osborn during 1917. The remainder of \$14,200.00 has been charged to L. Osborn and is included in Exhibit "A" under Contingent Assets—Accounts Receivable.

The cash receipts at Shafter consist of amounts transferred from the San Francisco office for the payment of all purchases and labor at the mine. These transfers have been verified and are in accordance with the San Francisco records. No

check, however, exists as to sales of supplies, scrap iron, lead ore, and sundry items. Part of the cash receipts and disbursements are recorded in a book called the safe blotter and transferred to the cash-book at the end of the month. This blotter is available only from January, 1912, to date. Cancelled checks of the San Antonio National Bank and bank statements from April, 1906, to November, 1910, were missing.

An investigation of the vouchers disclosed the fact that in various instances the Company paid for the hauling or loading of scrap iron and lead ore, the sale of which was not entered on the Company's books. The following is a list of a portion of such sales as determined by evidence obtained from the purchasers:

Scrap Iron Sales:

April, 1906 .....	\$ 224.36
March, 1907 .....	300.11
April, 1908 .....	144.58
January, 1909 .....	151.62
January, 1909 .....	45.00
December, 1909 .....	208.89
January, 1911 .....	259.09
July, 1911 .....	139.09
April, 1912 .....	117.30
October, 1913 .....	319.26

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Total.....\$1,909.30

Lead Ore Sale January, 1913.... 562.41

Total Sales not accounted for....\$2,471.71



Presidio Mining Company  
Comments on the Audit, etc.

Additional items unaccounted for are as follows:

Scrap Iron:

August, 1907, loading charges		
paid .....	\$6.50	
September, 1911, 31,190 lbs.		
hauling charges paid .....	62.38	
September, 1911, 30,090 lbs. haul-		
ing charges paid .....	60.18	
June, 1912, 5,420 lbs. hauling		
charges paid .....	10.84	
January, 1913, 22,360 lbs. hauling		
charges paid .....	44.72	
September, 1913, 16,730 lbs. haul-		
ing charges paid .....	33.46	
December, 1913, 26,060 lbs. haul-		
ing charges paid .....	52.12	\$270.20
	<hr/>	

Lead Ore:

September, 1911, 7,220 lbs. haul-		
ing charges paid .....	\$14.44	
April, 1912, 19,210 lbs. hauling		
charges paid .....	38.42	52.86
	<hr/>	<hr/>

Total.....\$323.06

The following estimated values are placed on  
above items:

Scrap Iron .....	\$ 860.00
Lead Ore .....	2,100.00
	<hr/>

Total.....\$2,960.00

In July, 1913, the Company paid for hauling 26,060, lbs. of lead ore. In the same month appears a cash-book entry for sale of 9.6 tons of lead ore amounting to \$391.74. The amount appears to be exceedingly low considering that the previous shipment of 7,080 lbs. netted \$562.41. No statements of the smelter were available. The check for \$391.-74 was deposited with the Marfa National Bank August 12, 1913. Under the same date, a deposit for \$771.20 appears on the bank statement, and on September 4, 1913, the bank shows a charge of \$771.20. Neither item is entered on the books, and we have not been able to determine the nature of the transaction.

The following is a list of additional ore shipments made from Marfa by the Presidio Mining Company and unaccounted for: [149]

Presidio Mining Company  
Comments on the Audit, etc.

Consignee.

El Paso Smelting Works, El Paso,

"

El Paso Smelter Company, El Paso,  
Department of Metallurgy, Stanford, California,  
El Paso Smelter Works, El Paso,

Date	Lbs.	Maximum Value	
		per ton per	R. R. Way Bill.
May 17, 1910	57,000	\$100.00	
Apr. 13, 1911	7,220	100.00	
Apr. 12, 1912	24,000	100.00	
Dec. 2, 1912	2,000		
Jan. 29, 1913	6,600		

We have not been able to find any entries regarding these shipments on the Company's books. The shipment of December 2, 1912, was probably sent to Stanford University for experimental purposes, and the shipments of April 12, 1912, and January 29, 1913, may refer to shipments shown on pages 4 and 5 of these comments under unaccounted for shipments, although the weights differ.

Assuming that the latter three items are thus accounted for, the value of the remaining items is estimated at \$5,100.00.

The total value of shipments unaccounted for may be summarized as follows:

Sales of scrap iron and lead ore un-	
accounted for as determined by	
evidence obtained from purchasers,	\$2,471.71
Estimated value of scrap iron and lead	
ore shipments for which hauling or	
loading charges were paid and pro-	
ceeds of sale not accounted for ....	2,960.00
Estimated value of ore shipped from	
Marfa .....	5,100.00
	<hr/>
Total actual and estimated value not	
accounted for .....	\$10,531.71
	<hr/>

This amount has not been taken up by us in the accounts.

Additional ore shipments from Marfa are listed below. We have been unable to ascertain whether or not any of these shipments belong to the Presidio Mining Company. [150]

Presidio Mining Company  
Comments on the Audit, etc.

Maximum Value  
per ton per

Lbs. R. R. Way Bill

Shipped by Fred Driffl to El Paso

Smelting Works.

El Paso:

Feb. 10, 1910.. . . . .	50,000	\$100.00
Jul. 23, 1910. . . . .	56,200	100.00
Oct. 3, 1910. . . . .	55,000	100.00
Aug. 4, 1911. . . . .	50,000	100.00
Nov. 20, 1911. . . . .	60,000	100.00
June 29, 1912. . . . .	24,000	100.00
Jan. 13, 1917. . . . .	60,000	500.00

Shipped by H. B. Young to El Paso Smelter.

Apr. 28, 1915. . . . .	50,000	\$100.00
May 27, 1915. . . . .	24,000	100.00
June 19, 1915. . . . .	24,000	100.00
July 12, 1915. . . . .	51,220	100.00
Dec. 22, 1915. . . . .	30,000	100.00
Jan. 15, 1916. . . . .	24,000	100.00

Shipped by Kirk and Lavelle to Western Metal  
Company,

El Paso:

May 2, 1916. . . . .	60,000
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Checotah, Oklahoma:

May 16, 1916. . . . .	70,000
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El Paso:

May 26, 1916. . . . .	60,000
May 30, 1916. . . . .	50,000

## Checotah, Oklahoma:

June 8, 1916. ....	70,000
June 16, 1916. ....	60,000
July 1, 1916. ....	70,000
July 6, 1916. ....	60,000
July 14, 1916. ....	60,000
July 22, 1916. ....	90,000
July 25, 1916. ....	100,000

Shipped by John Heron to J. C. Zozaya,

## El Paso:

May 27, 1916. ....	58,000	\$100.00
June 10, 1916. ....	55,430	100.00
July 12, 1916. ....	64,060	

Shipped by C. E. Poer to W. B. Wofford,

## El Paso:

Jan. 20, 1917. ....	61,880
Feb. 7, 1917. ....	63,860
Feb. 19, 1917. ....	42,015
Mar. 1, 1917. ....	49,700
Mar. 20, 1917. ....	64,670

[151]

Presidio Mining Company,

Comments on the Audit, etc.

Maximum Value  
per ton per

Lbs. R. R. Way Bill

Shipped by Raymond Bell to Kansas City Con-  
solidated Smelter and Refining Company, El  
Paso:

May 1, 1917, ....	61,000	
Aug. 1, 1917, ....	80,000	\$100.00
Aug. 29, 1917, ....	68,000	90.00



Shipped by C. P. Halter to Kansas City Smelting and Refining Company, El Paso:

Aug. 14, 1917.....80,000

With few exceptions, receipted vouchers were found at the mine except that the superintendent's vouchers were not sufficiently substantiated by sub-vouchers. Payments were made from the "Doctor Funds" from March, 1907, to October 31, 1910, averaging \$25.00 per month, and subsequent to October 31, 1910, at an average of \$50.00 per month.

From September, 1911, to the beginning of 1916, the mine boarding-house losses, and from March, 1912, the mill boarding-house losses, have been disbursed on the superintendent's voucher without showing how the various losses were determined.

The following is a list of the more important disbursements, the vouchers for which are not substantiated:

Sept. 1913, voucher #23, Rangers' Expense	
and Board	.....\$260.00
Oct. 1913, voucher #25, Rangers' Expense	
and Board	..... 254.75
Nov. 1913, voucher #23, Foundations for	
tram tower	..... 139.00
Painting tram tow-	
ers	..... 75.00
Foundation for mine	
tram terminal..	40.25
Dec. 1913, voucher #29, Rangers' salary and	
board	..... 251.00
Jan. 1914, voucher #25, Rangers' salary and	
board	..... 257.00

Feb. 1914, voucher # 1, Rangers' salary and	
board . . . . .	251.00
Mar. 1914, voucher #19, Tramway towers	
labor . . . . .	164.50

Sundry receipted bills aggregating \$438.10 were found at the mine, which were never entered on the Company's books. [152]

### Presidio Mining Company

Comments on the Audit, etc.

In February, 1912, we find a disbursement of \$470.00 on the Shafter cash-book in favor of L. Osborn. The San Francisco Journal shows this amount to be charged to *suspense* and subsequently transferred to Profit & Loss without any explanation. Apparently this amount was paid for 37 acres of land acquired from Ygnesia Brooks by W. S. Noyes, in January, 1912, and subsequently transferred to the Presidio Mining Company. The deed acknowledges receipt of \$370.00, leaving \$100.00 unaccounted for. We have charged the amount of \$470.00 to Capital Expenditures.

December 31, 1913, Voucher #31 shows a payment of \$1,500.00 for one Buick automobile, for which no bill was on file. The voucher refers to checks #582 and #583, which were made out as follows:

#582, January 27, 1914, in favor of E. M.	
Gleim . . . . .	\$ 750.00
#583, January 27, 1914, in favor of J. C.	
Bird . . . . .	750.00
<hr/>	
Total . . . . .	\$1,500.00

Entries are shown in the safe blotter of the receipt of \$245.00 under date of April, 1914, and a disbursement of a like amount marked "Contingent Fund," without explanation. No record of this transaction is shown in the general books of the Company.

## CONTINGENT ASSETS—ACCOUNTS RECEIVABLE.

The interlocutory decree necessitated the setting up of certain contingent accounts receivable, which if sustained by the United States Circuit Court of Appeals will become current assets. If, however, the decree should be reversed, these entries should be corrected accordingly. These accounts receivable have been set up to conform with the report of the Master in Chancery, dated November 30, 1918, including, however, all credits on the books of the Company to the account of W. S. Noyes for ore obtained from Section No. 5, which are not stated in the Master of Chancery's report.

The following items comprise the contingent accounts receivable: [153]

Presidio Mining Company  
Comments on the Audit, etc.

W. S. Noyes:

Credits for ore obtained from Section	
#5 .....	\$170,118.70
Salaries and director fees disallowed	
by Master in Chancery.....	9,210.00
Commission received from Benton	
Bowers on hauling charges dis-	
allowed .....	3,195.00

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Commission received from boarding-		
house disallowed .....	250.00	
Commission received from E. G. Gleim		
disallowed .....	6,200.00	
		<hr/>
Total.....	\$188,973.70	

Less:

Credits for ore included		
above which have not		
been paid .....	\$110,282.50	
Cost value of section #5	25,099.32	
Salary for month of April,		
1913 .....	450.00	
Cash .....	10,689.75	146,521.57
		<hr/>
Remainder.....	\$ 42,452.13	

L. Osborn:

Shortage .....	\$14,200.00	
Salaries disallowed .....	5,920.00	20,120.00

B. S. Noyes—Salaries and director fees		
disallowed .....	2,085.00	
J. W. F. Peat—Salaries and director		
fees disallowed .....	4,640.00	
L. M. Doherty—director fees disal-		
lowed .....	45.00	

Total.....\$ 69,342.13

The above accounts do not include accrued interest.

## RESERVES.

### DEPRECIATION OF BUILDINGS, MACHINERY, AND EQUIPMENT

The reserve for depreciation of the plant and equipment has been based on the life of the mine. It has been estimated that the mine will be exhausted on or about January 1, 1924. The condition of the mine does not permit of any accurate calculation of the extent of the undeveloped ore bodies. [154]

Presidio Mining Company,  
Comments on the Audit, etc.

### DEPLETION

The depletion of the mine is calculated at the rate of 2-1/2 cents per fine ounce produced, and the yearly totals of fine ounces produced are based on the returns from Selby Smelting and Lead Company.

### GENERAL.

The results of the operations for the period from April 1, 1906, to December 31, 1917, are fully set forth in Exhibit "B," which includes the earnings from Section No. 5, and sundry commissions in conformity with the interlocutory decree, and adjustments eliminating from expenses various salaries and directors' fees disallowed by the Master in Chancery, also adjustments to set up various capital expenditures erroneously charged to operating expenses.

In accordance with your request, we have prepared and attach hereto as Exhibit "C" a statement of payments during the years 1906 to 1917, inclusive, to E. G. Gleim Company, who conducted the general store at Shafter. [155]





## LIBERTY MINING COMPANY

GENERAL BALANCE SHEET AT AUGUST 31 OF YEARS 1905 TO 1913, INCLUSIVE, AND AT DECEMBER 31 OF YEARS 1914 TO 1917, INCLUSIVE

	DECEMBER 31							AUGUST 31				
	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906
<b>ASSETS</b>												
<b>PLANT PROPERTY:</b>												
Mine,.....	\$175,099.32	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00
Buildings, Machinery, and Equipment,.....	318,558.75	248,749.45	242,178.77	233,451.45	189,243.16	145,815.48	124,247.73	124,247.73	124,247.73	124,247.73	124,247.73	124,247.73
Total Plant Property,.....	\$493,658.07	\$398,749.45	\$392,178.77	\$383,451.45	\$339,243.16	\$295,815.48	\$274,247.73	\$274,247.73	\$274,247.73	\$274,247.73	\$274,247.73	\$274,247.73
<b>INVESTMENTS - UNITED STATES LIBERTY LOAN BONDS,.....</b>	<b>\$ 25,000.00</b>											
<b>WORKING ASSETS:</b>												
Mill Supplies,.....	\$ 25,335.70	\$ 28,158.28	\$ 14,493.35	\$ 9,071.51	\$ 5,244.40	\$ 19,120.03	\$ 19,317.37	\$ 15,891.20	\$ 18,504.91	\$ 18,030.20	\$ 17,514.73	\$ 17,493.84
Mine Supplies,.....	13,798.50	10,299.01	4,123.15	1,052.18	1,881.57	1,153.45	1,425.27	973.05	1,804.80	944.56	993.13	1,419.88
Fuel Oil,.....	3,095.06	4,805.85	3,391.39	3,957.65	2,507.51	1,035.21	1,745.41	1,015.98	1,584.13	1,703.93	529.87	731.36
Coal and Wood,.....	350.24	424.36	505.75	1,042.44	775.75	415.50	477.79	223.10	578.99	711.40	199.58	2,002.83
Total Working Assets,.....	\$ 43,589.50	\$ 43,697.51	\$ 22,514.55	\$ 13,123.79	\$ 11,409.23	\$ 21,735.20	\$ 22,967.64	\$ 19,104.33	\$ 22,772.83	\$ 21,390.19	\$ 19,337.31	\$ 21,547.91
<b>CURRENT ASSETS - CASH,.....</b>	<b>\$108,522.52</b>	<b>\$ 53,552.31</b>	<b>\$ 4,247.25</b>	<b>17,512.82</b>	<b>\$ 5,535.55</b>	<b>\$ 30,204.27</b>	<b>\$ 30,535.29</b>	<b>\$ 19,374.82</b>	<b>\$ 29,415.55</b>	<b>\$ 40,848.95</b>	<b>\$ 23,482.85</b>	<b>\$ 32,531.42</b>
<b>DEFERRED DEBIT ITEMS,.....</b>	<b>\$ 500.00</b>					<b>\$ 450.00</b>						
<b>CONTINGENT ASSETS - ACCOUNTS RECEIVABLE,.....</b>	<b>\$ 54,342.13</b>	<b>\$ 91,511.45</b>	<b>\$ 87,528.45</b>	<b>\$ 54,531.25</b>	<b>\$ 35,525.35</b>	<b>\$ 11,147.00</b>	<b>\$ 8,847.00</b>	<b>\$ 5,397.00</b>	<b>\$ 4,457.00</b>	<b>\$ 1,890.00</b>	<b>\$ 450.00</b>	<b>\$ 450.00</b>
<b>TOTAL,.....</b>	<b>\$740,122.32</b>	<b>\$588,112.72</b>	<b>\$505,569.14</b>	<b>\$470,729.31</b>	<b>\$392,115.30</b>	<b>\$350,352.95</b>	<b>\$335,592.85</b>	<b>\$319,423.88</b>	<b>\$330,893.22</b>	<b>\$338,375.87</b>	<b>\$317,517.90</b>	<b>\$328,877.05</b>
<b>LIABILITIES</b>												
<b>CAPITAL STOCK - AUTHORIZED 10,000,000 SHARES OF \$1.00 EACH OUTSTANDING 150,000 SHARES,....</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>	<b>\$150,000.00</b>
<b>CURRENT LIABILITIES:</b>												
Notes Payable,.....			\$ 12,000.00	\$ 25,750.00	\$ 19,000.00							
Accounts Payable,.....				16,054.99	4,051.50							
Balance Due on Subscription to United States Liberty Loan Bonds,.....	\$ 10,000.00											
Accrued Federal Taxes,.....	24,532.14											
Total Current Liabilities,.....	\$ 34,532.14		\$ 12,000.00	\$ 44,814.99	\$ 23,051.50							
<b>DEFERRED CREDIT ITEMS,.....</b>										300.00		
<b>RESERVES:</b>												
Depreciation of Buildings, Machinery, and Equipment,....	\$145,927.59	\$121,989.83	\$103,737.95	\$ 65,410.13	\$ 57,218.99	\$ 57,356.40	\$ 50,429.50	\$ 44,444.33	\$ 38,459.08	\$ 32,473.83	\$ 25,488.58	\$ 20,503.33
Depletion of Mine,.....	70,450.35	55,532.15	39,475.03	23,573.74	10,452.15							
Total Reserves,.....	\$216,388.04	\$177,521.98	\$143,212.98	\$109,983.87	\$ 67,671.14	\$ 57,356.40	\$ 50,429.58	\$ 44,444.33	\$ 38,459.08	\$ 32,473.83	\$ 25,488.58	\$ 20,503.33
<b>PROFIT &amp; LOSS SURPLUS - PER EXHIBIT "B",.....</b>	<b>\$339,202.14</b>	<b>\$250,490.74</b>	<b>\$200,855.15</b>	<b>\$155,930.45</b>	<b>\$141,382.55</b>	<b>\$152,984.55</b>	<b>\$135,253.28</b>	<b>\$124,979.55</b>	<b>\$142,434.14</b>	<b>\$155,503.04</b>	<b>\$141,029.32</b>	<b>\$158,373.73</b>
<b>TOTAL,.....</b>	<b>\$740,122.32</b>	<b>\$588,112.72</b>	<b>\$505,569.14</b>	<b>\$470,729.31</b>	<b>\$392,115.30</b>	<b>\$350,352.95</b>	<b>\$335,592.85</b>	<b>\$319,423.88</b>	<b>\$330,893.22</b>	<b>\$338,375.87</b>	<b>\$317,517.90</b>	<b>\$328,877.05</b>

EXHIBIT "A"



## FROSTBITE MINING COMPANY

STATEMENT OF INCOME AND PROFIT &amp; LOSS, BY PERIOD, FROM APRIL 1, 1905, TO DECEMBER 31, 1917.

	YEAR ENDED DEC 31,.....			15 MONTHS ENDED DEC 31,	YEAR ENDED AUGUST 31,.....			5 MONTHS ENDED AUGUST 31,				
	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906
SALES:												
Silver Bullion.....	\$459,514.59	\$397,743.18	\$314,501.43	\$389,893.03	\$184,396.70	227,825.59	\$215,439.70	\$180,963.48	\$183,974.45	\$218,833.11	\$191,092.75	\$ 79,585.09
Lead Ore.....					391.74			722.50	2,513.55		150.00	
Total.....	\$459,514.59	\$397,743.18	\$314,501.43	\$389,893.03	\$184,788.44	\$227,825.59	\$215,439.70	\$181,685.98	\$186,488.00	\$218,833.11	\$191,242.75	\$ 79,585.09
OPERATING EXPENSES:												
Labor and Material at Mine.....	\$147,621.10	\$124,172.95	\$ 94,245.47	\$110,538.39	\$ 51,580.21	\$ 53,751.01	\$ 59,034.02	\$ 61,049.79	\$ 59,843.50	\$ 60,831.98	\$ 55,839.29	\$130,531.52
Labor and Material at Mill.....	126,019.03	133,251.51	104,589.74	145,951.52	88,799.41	102,844.75	103,150.18	98,733.30	99,932.12	102,925.58	97,610.92	38,524.98
Ore Transportation.....	8,773.03	8,754.12	8,564.75	20,746.85	13,752.51	17,619.14	10,372.08	18,282.23	18,456.90	17,959.34	15,612.55	7,770.95
Tramway Contract.....			1,500.00	7,500.00								
Salaries.....	5,400.00	5,400.00	4,597.50	11,505.00	5,700.00	5,400.00	5,400.00	5,400.00	5,400.00	5,400.00	5,400.00	2,250.00
Automobile Expense.....	2,186.07	1,847.49	1,529.51	483.30	488.18	209.19						
Bullion Expense.....	2,540.00	2,540.00	1,891.00	3,600.00	2,420.00	2,540.00	2,540.00	2,540.00	2,540.00	2,540.00	2,540.00	1,100.00
Assay Office Expense.....	2,254.95	1,539.59	1,275.09	942.75	388.72	851.53	282.75	413.10	383.30	425.63	322.48	150.49
Team Expense.....	2,142.23	2,113.23	501.34	1,958.17	573.55	310.35	507.59	770.92	128.74	919.30	591.93	273.40
Miscellaneous.....	17,353.79	13,103.94	15,714.50	13,102.58	5,951.10	5,353.36	3,957.97	1,339.05	1,504.53	1,859.50	3,582.73	588.58
Total.....	\$314,402.21	\$292,932.93	\$234,509.10	\$315,440.57	\$170,753.79	\$198,999.45	\$193,454.59	\$188,820.40	\$188,889.35	\$192,082.53	\$193,999.91	\$ 81,399.93
GROSS PROFIT ON SALES.....	\$155,112.48	\$104,812.25	\$ 79,992.33	\$ 73,452.46	\$ 14,024.65	\$ 28,826.13	\$ 21,985.11	\$ 7,865.58	\$ 2,649.64	\$ 25,750.58	\$ 2,737.12	\$ 1,014.84
GENERAL EXPENSES:												
Salaries.....	\$ 5,400.00	\$ 5,400.00	\$ 5,400.00	\$ 8,410.00	\$ 3,950.00	\$ 3,900.00	\$ 3,900.00	\$ 3,875.00	\$ 3,900.00	\$ 4,275.00	\$ 5,000.00	\$ 2,500.00
Taxes.....	2,514.29	3,309.67	1,228.10	1,457.50	1,279.28	1,395.91	1,189.65	1,047.84	1,044.35	1,201.25	1,415.15	
Legal and Secret Service.....	825.00	495.00	554.00	4,014.55	1,033.05	345.80		300.00		985.05		
Insurance.....				221.40	871.20	1,045.45	1,140.71	737.50	1,500.00	500.00	1,002.75	895.00
Miscellaneous.....	2,255.03	1,522.39	2,404.08	920.30	710.52	175.88	185.15	156.50	158.45	170.31	184.10	115.72
Total.....	\$ 10,995.32	\$ 10,727.06	\$ 9,595.18	\$ 15,033.95	\$ 7,844.15	\$ 6,855.04	\$ 5,415.51	\$ 5,115.94	\$ 5,502.80	\$ 7,131.51	\$ 8,502.01	\$ 3,511.72
PROFIT FROM OPERATIONS.....	\$144,116.16	\$ 94,085.19	\$ 70,397.15	\$ 58,418.51	\$ 6,180.50	\$ 21,950.09	\$ 15,569.60	\$ 1,749.64	\$ 1,146.84	\$ 19,618.97	\$ 11,359.15	\$ 5,326.56
OTHER INCOME CREDITS:												
Commissions Collected by W. S. Noyes.....				\$ 195.00	1,500.00	1,700.00	1,700.00	1,790.00	1,820.00	940.00		
Miscellaneous.....					1,020.25							
GROSS INCOME.....	\$144,116.16	\$ 94,085.19	\$ 70,397.15	\$ 58,613.51	\$ 8,700.75	\$ 23,650.09	\$ 17,269.60	\$ 1,749.64	\$ 1,146.84	\$ 20,558.97	\$ 11,359.15	\$ 5,326.56
INCOME CHARGES:												
Provision for Depreciation of Buildings, Machinery, and Equipment.....	\$ 23,937.85	\$ 18,251.87	\$ 17,327.83	\$ 19,191.14	\$ 9,850.59	\$ 5,938.82	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 2,493.85
Provision for Depletion of Mine.....	14,828.20	15,556.12	15,402.29	13,121.59	10,452.15							
Interest.....		541.51	1,541.33	1,752.79								
Federal Taxes.....	25,538.70											
Total.....	\$ 64,304.75	\$ 34,349.50	\$ 35,271.45	\$ 34,065.52	\$ 20,302.74	\$ 5,938.82	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 5,985.25	\$ 2,493.85
NET INCOME.....	\$ 79,811.40	\$ 59,735.69	\$ 35,125.70	\$ 24,547.89	\$ 1,397.91	\$ 16,711.27	\$ 11,284.35	\$ 1,749.64	\$ 1,146.84	\$ 14,573.72	\$ 5,373.90	\$ 2,832.71
PROFIT & LOSS SURPLUS AT BEGINNING OF PERIOD	\$50,490.74	\$20,855.15	\$15,930.45	\$11,302.55	\$12,984.55	\$13,253.20	\$12,979.55	\$12,434.14	\$15,503.04	\$11,293.32	\$18,373.73	\$15,194.15
PROFIT & LOSS SURPLUS AT END OF PERIOD.....	\$139,302.14	\$260,490.74	\$200,855.15	\$155,930.45	\$141,302.55	\$152,984.55	\$136,253.20	\$124,979.55	\$142,434.14	\$155,503.04	\$141,029.32	\$158,373.73

= DENOTES FIGURES IN RED.





## FEDERAL RESERVE BANK

STATEMENT OF PAYMENTS MADE TO F. C. GLENN COMPANY DURING THE PERIOD  
APRIL 1, 1906, TO DECEMBER 31, 1917

	YEAR ENDED DECEMBER 31,.....											NINE MONTHS ENDED DECEMBER 31
	1917	1916	1915	1914	1913	1912	1911	1910	1909	1908	1907	1906
<b>PAYROLL DEDUCTIONS:</b>												
January.....	\$ 7,754.95	\$ 6,166.25	\$ 4,331.10	\$ 5,170.67	\$ 3,949.40	\$ 3,790.75	\$ 3,773.75	\$ 3,157.45	\$ 3,137.70	\$ 3,067.40	\$ 3,137.00	
February.....	5,952.15	5,959.45	4,144.30	4,620.30	3,057.20	3,659.20	3,090.40	3,066.90	2,320.55	3,002.25	2,754.05	
March.....	7,132.05	6,181.65	4,095.35	5,640.30	3,199.15	3,518.50	3,434.55	3,298.50	3,298.25	3,141.60	3,066.95	
April.....	6,898.55	5,951.05	5,068.75	5,455.25	3,383.45	3,557.40	3,334.15	3,262.50	3,039.05	3,201.40	2,750.70	3,009.00
May.....	7,486.50	6,183.55	5,155.30	4,918.45	3,335.55	3,550.70	3,458.30	3,235.35	3,097.15	3,190.70	3,039.75	3,011.05
June.....	7,431.70	6,257.20	5,059.55	4,787.95	3,311.95	3,532.90	3,336.00	3,022.25	3,095.05	3,151.00	2,814.10	2,937.95
July.....	7,709.75	6,219.85	5,275.95	4,577.90	2,952.50	3,822.65	3,319.35	2,998.75	3,135.40	3,215.95	3,185.50	2,941.20
August.....	7,873.95	6,327.30	5,255.80	4,849.20	4,133.35	4,055.70	3,313.85	3,155.10	3,132.20	3,390.35	3,254.45	2,954.50
September.....	7,532.55	6,017.75	5,313.80	4,646.80	4,538.45	3,703.05	3,314.50	3,176.25	3,069.75	3,129.35	3,111.40	2,885.50
October.....	6,873.35	6,413.25	5,505.75	4,623.15	4,577.55	3,654.15	3,730.55	3,302.15	2,950.60	3,139.35	3,085.30	3,080.65
November.....	6,235.90	5,939.55	5,749.25	3,758.35	4,575.15	3,572.50	3,732.05	3,258.70	2,840.55	3,016.10	3,011.80	2,883.70
December.....	6,444.85	6,771.10	6,105.55	4,094.95	5,093.75	3,541.00	3,729.85	3,523.65	3,107.80	3,341.00	3,210.95	3,141.40
Total.....	\$45,485.75	\$75,194.75	\$52,009.45	\$57,072.10	\$45,719.11	\$44,758.50	\$41,407.30	\$39,410.05	\$36,117.25	\$37,955.95	\$36,672.45	\$26,745.65
<b>INVOICES:</b>												
January.....	\$ 1,023.54	\$ 995.30	\$ 715.92	\$ 549.40	\$ 402.11	\$ 250.52	\$ 162.31	\$ 157.31	\$ 94.72	\$ 254.47	\$ 176.01	
February.....	550.43	491.50	426.14	705.18	737.31	617.34	243.46	133.94	180.21	325.64	295.59	
March.....	740.98	398.74	796.15	759.75	579.51	1,053.54	376.36	103.15	352.86	740.95	353.27	
April.....	339.99	1,127.00	583.33	1,352.03	878.73	565.66	207.39	462.93	134.49	721.38	280.03	134.71
May.....	1,120.19	1,075.57	527.87	1,076.71	571.75	305.45	268.11	199.47	211.74	137.53	177.43	755.04
June.....	1,145.53	1,257.35	750.57	657.39	501.38	400.97	414.77	233.31	170.77	199.11	415.16	64.32
July.....	1,151.13	935.92	1,534.19	885.11	812.40	349.70	387.32	199.52	243.09	442.22	873.33	226.42
August.....	1,118.09	604.31	1,471.54	638.50	1,532.36	227.18	233.37	340.60	370.34	549.84	327.16	302.54
September.....	815.44	589.48	1,433.50	607.34	1,152.86	120.55	301.91	391.10	190.71	110.28	404.53	150.63
October.....	1,071.92	854.78	569.57	790.93	1,190.34	179.57	235.29	202.70	407.20	195.55	401.22	309.10
November.....	1,273.72	714.72	1,156.01	502.45	915.54	504.46	603.29	409.48	48.77	249.12	153.71	854.75
December.....	1,125.32	922.37	470.52	311.80	1,038.04	239.45	337.81	501.01	105.48	12.99	211.79	267.21
Total.....	\$11,911.89	\$11,159.05	\$11,505.74	\$9,235.59	\$11,279.34	\$4,400.95	\$1,801.97	\$3,331.62	\$2,405.39	\$4,072.94	\$4,109.31	\$2,371.98

The payroll deductions shown above represent purchases made by employees except that the items from April 1, 1906, to May 31, 1910, include approximately 3% of miscellaneous company deductions, the exact amount of which could not be determined owing to the incomplete condition of the records.





[Endorsed]: Filed Nov. 17, 1919. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[159]

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### Report of Auditors.

Oct. 4, 1919.

New York	HASKINS & SELLS	San Francisco
Chicago		Los Angeles
Detroit	Certified Public Accountants	New Orleans
Saint Louis	Cable Address "Haskells"	Seattle
Boston		Denver
Cleveland	Crocker Building	Atlanta
Baltimore	San Francisco	Watertown
Pittsburgh		London

October 2, 1919.

Walter B. Maling, Esq.,  
Receiver, Presidio Mining Company,  
San Francisco, California.

Dear Sir:

Pursuant to engagement, we have audited the books and accounts of the Presidio Mining Company for the year ended December 31, 1918, and submit herewith three pages of comments and the following described exhibits:

#### EXHIBIT

"A"—General Balance Sheet, December 31, 1918 and 1917, and Comparison.

"B"—Statement of Income and Profit & Loss for the Years Ending December 31, 1918 and 1917, and Comparison.

Yours truly,

HASKINS & SELLS. [160]

PRESIDIO MINING COMPANY  
 COMMENTS ON THE AUDIT  
 FOR THE YEAR ENDED DECEMBER 31, 1918.  
 BUILDINGS, MACHINERY, AND  
 EQUIPMENT.

The increase of \$31,717.32 in this account, as shown in Exhibit "A," is made up as follows:

De La Verque Engine Installation,....	\$19,078.44
Hospital Building,.....	3,253.14
Air Pipes and Fittings,.....	2,329.53
Electric Installation,.....	2,516.73
Automobile. ....	1,210.00
Mill Improvements. ....	711.91
Filter #2. ....	253.71
Compressor. ....	232.85
Concrete Crossing. ....	407.85
Miscellaneous Machinery and Equipment	1,602.16
Furniture and Fixtures. ....	121.00

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Total ..... \$31,717.32

All vouchers referring to above charges were examined by us and, in our opinion, constitute proper capital charges.

### INVESTMENTS.

The following items are included under this caption:

Second Liberty Loan, 4 $\frac{1}{4}$ % Bonds,....	\$ 25,000.00
Third Liberty Loan, 4 $\frac{1}{4}$ % Bonds,....	60,000.00
Fourth Liberty Loan, 4 $\frac{1}{4}$ % Bonds,...	65,000.00
War Savings Stamps, .....	834.00

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Total ..... \$150,834.00

The securities listed above were verified by inspection.

### WORKING ASSETS.

Physical inventories of the supplies on hand were taken by employees of the Company and priced at cost. We tested the prices and verified the extensions and footings. [161]

Presidio Mining Company  
Comments on the Audit, etc.

### CURRENT ASSETS.

#### CASH.

The cash on hand was verified by count, and cash on deposit by verifications obtained from the depositaries.

### CONTINGENT ASSETS—ACCOUNTS RECEIVABLE.

The following items are included under this caption:

W. S. Noyes,.....	\$42,577.13
L. Osborn. ....	20,120.00
B. S. Noyes, ....	2,110.00
J. W. F. Peat .....	4,810.00
L. M. Doherty, .....	45.00

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Total ..... \$69,662.13

The above charges are based on Interlocutory Decree Number 196 in the District Court of the United States in and for the Northern District of California, Second Division, *W. S. Overton et al vs. Presidio Mining Company*, dated February 16, 1918.

## RESERVES.

## DEPRECIATION.

The reserve for depreciation is based upon the life of the mine as estimated by the Company's mining engineer.

## DEPLETION.

Provision for depletion of ore bodies has been made at the rate of two and one-half cents per fine ounce produced.

## GENERAL.

As requested, we have examined the production records to determine the losses sustained by the Company on account of labor trouble during November and December, 1918, and the influenza epidemic in October and November. [162]

Presidio Mining Company  
Comments on the Audit, etc.

We are of the opinion that no loss of consequence can be attributed to the labor troubles. The mill was shut down from October 29 to November 12 on account of the influenza epidemic, and only \$26,146.-95 fine ounces of silver were produced during the month of November, while an average of 45,368.28 fine ounces per month were produced in the remaining eleven months of the year. [163]

PRESIDIO MINING COMPANY

GENERAL BALANCE SHEET  
DECEMBER 31, 1918 AND 1917, AND COMPARISON

	..... DECEMBER 31, .....	1918	1917	INCREASE 1918
<u>ASSETS</u>				
PLANT PROPERTY:				
Land,.....	\$175,099.32	\$175,099.32	\$	
Buildings, Machinery, and Equipment.	350,266.67	310,566.73		31,717.32
Total Plant Property,.....	\$525,365.99	\$493,666.07	\$	31,717.32
INVESTMENTS:				
United States Liberty Bonds,.....	\$150,000.00	\$25,000.00	\$125,000.00	
War Savings Stamps,.....	834.00			834.00
Total Investments,.....	\$150,834.00	\$25,000.00	\$125,834.00	
WORKING ASSETS:				
Mill Supplies,.....	\$20,080.21	\$25,335.70	\$	5,255.49
Mine Supplies,.....	17,046.84	13,798.50		3,248.34
Fuel Oil,.....	2,458.11	3,095.06		636.95
Coal and Wood,.....	282.65	360.24		77.59
Total Working Assets,.....	\$39,867.81	\$43,589.50		3,721.69
CURRENT ASSETS - CASH,.....	\$151,874.87	\$108,522.52	\$	43,352.25
CONTINGENT ASSETS - ACCOUNTS				
RECEIVABLE,.....	\$69,352.13	\$69,342.13	\$	320.00
TOTAL,.....	\$347,624.20	\$740,122.32	\$197,501.86	
<u>LIABILITIES</u>				
CAPITAL STOCK OUTSTANDING 150,000				
SHARES PAR VALUE OF \$1.00 EACH,.....	\$150,000.00	\$150,000.00		
CURRENT LIABILITIES:				
Balance Due on Subscription to				
United States Liberty Loan Bonds, ..	\$	\$10,000.00	\$	10,000.00
Accrued Federal Taxes,.....	116,855.25	24,532.14		92,334.11
Total Current Liabilities, ..	\$116,855.25	\$34,532.14	\$	82,334.11
RESERVES:				
Depreciation,.....	\$177,951.92	\$145,927.69	\$	32,024.23
Depletion,.....	84,724.51	70,460.35		14,264.16
Total Reserves,.....	\$262,676.43	\$216,388.04	\$	46,288.39
SURPLUS,.....	\$408,081.52	\$339,202.14	\$	68,879.38
TOTAL,.....	\$957,624.20	\$740,122.32	\$197,501.86	





STATEMENT OF INCOME AND PROFIT & LOSS  
FOR THE YEARS ENDED DECEMBER 31, 1916 AND 1917, AND COMPARISON

	YEAR ENDED DECEMBER 31,		INCREASE DECREASE
	1916	1917	
<b>REVENUE:</b>			
Silver Bullion.....	\$541,670.32	\$459,514.69	72,355.63
Lead Ore.....	7,483.94		7,483.94
Total,.....	\$549,154.26	\$459,514.69	79,839.57
<b>DEBITING EXPENSES:</b>			
Labor and Material at Mine.....	\$133,306.25	\$147,521.10	14,314.84
Labor and Material at Mill.....	136,531.37	125,019.03	12,512.34
Freight Transportation.....	9,263.11	8,773.03	490.08
Salaries.....	9,450.00	5,400.00	4,050.00
Automobile Expense.....	1,363.52	2,185.07	822.55
Bullion Expense.....	2,640.00	2,640.00	
Pay Office Expense.....	1,033.09	2,254.95	1,221.87
Team Expense.....	542.34	2,142.23	1,599.89
Miscellaneous Expense.....	19,460.08	17,365.79	2,094.29
Total,.....	\$315,589.77	\$314,402.21	1,187.56
NET PROFIT ON SALES.....	\$233,754.49	\$155,112.48	78,652.01
<b>GENERAL EXPENSES:</b>			
Salaries.....	\$ 1,618.33	\$ 5,400.00	3,781.67
Receivership Fees.....	8,541.52		8,541.52
Taxes.....	3,618.73	2,516.29	1,102.44
Legal Expense.....	2,500.00	625.00	1,675.00
Donations.....	1,000.00	500.00	500.00
Sundries.....	1,352.54	1,755.03	401.49
Total,.....	\$ 18,632.12	\$ 10,996.32	7,635.80
NET PROFIT FROM OPERATIONS.....	\$215,132.37	\$144,116.16	\$ 71,016.21
<b>OTHER INCOME CREDITS:</b>			
Interest.....	\$ 3,672.86		\$ 3,672.86
Miscellaneous.....	25.00		25.00
Total,.....	\$ 3,697.86		\$ 3,697.86
NET INCOME.....	\$218,830.23	\$144,116.16	\$ 74,714.07
<b>OTHER CHARGES:</b>			
Depreciation on Plant Building and Equipment.....	\$ 32,024.23	\$ 23,937.86	8,086.37
Depletion.....	14,264.16	14,828.20	554.04
Total,.....	\$ 46,288.39	\$ 38,766.06	\$ 7,522.33
INCOME BEFORE DEDUCTING FEDERAL TAXES.....	\$172,541.84	\$105,350.10	\$ 67,191.74
FEDERAL TAXES.....	103,672.46	26,538.70	77,023.76
NET PROFIT & LOSS SURPLUS FOR THE YEAR,...	\$ 68,879.38	\$ 78,711.40	9,832.02
NET PROFIT & LOSS SURPLUS AT BEGINNING OF YEAR.....	339,202.14	260,490.74	78,711.40
NET PROFIT & LOSS SURPLUS AT END OF YEAR..	\$408,081.52	\$339,202.14	\$ 68,879.38



[Endorsed]: Filed Nov. 17, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [166]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,  
vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,  
Defendants.

**First Report of Receiver.**

Walter B. Maling, Receiver herein, presents the  
following as the first report of his receivership:

1. That on the 20th day of February, 1918, said  
Court, by Hon. William C. Van Fleet, Judge, en-  
tered herein its order appointing said Walter B.  
Maling receiver herein, and by said order he was  
authorized and directed—

To take immediate and exclusive possession  
of said defendant Presidio Mining Company,  
its office, Room 209, 255 California Street, San  
Francisco, California, its assets, books, records  
and papers, to continue, control, carry on and  
conduct its business in all its ramifications, in-

cluding the mining, milling and handling its ores, selling its bullion and to discharge all of the duties obligatory on said corporation;

To operate said Presidio Mine in and on Section 8 and Section 5, the milling and reduction plant of said corporation, and manage said properties in such [167] manner as would in his judgment produce the most satisfactory results consistent with the discharge of the duties imposed thereon; to collect and receive all the income therefrom, and for such purpose he was invested with full power in his discretion to employ, discharge, fix compensation of, any and all agents, attorneys, managers, superintendents and employees as may be necessary to aid in the discharge of his duties;

To make such investigations, institute and prosecute such suits as might be necessary in his judgment for the recovery of moneys or other assets belonging to said corporation, or for the proper protection of the said properties and trusts thereby vested in him, and to likewise defend all such actions instituted against him as such receiver, the prosecution or defense of which in his judgment would be necessary for the proper protection of the said property placed in his charge, or benefit or increase the assets of said corporation;

To take any and all steps by ancillary or other legal proceedings required by law in the proper courts and jurisdictions to obtain full and complete authority to carry out the orders and provisions herein contained;

To continue in office pursuant to the terms and under the conditions above mentioned until the final determination of this suit, or until otherwise ordered by said Court.

2. That he was further ordered, within thirty days, to file with the Clerk of said Court a proper undertaking with [168] satisfactory sureties to be approved by the Court, for the sum of \$10,000, conditioned for the faithful discharge of his duties and to account for all funds coming into his hands according to the order of the Court.

3. That immediately upon the entry of said order and in accordance therewith, he duly executed and filed with the Clerk of said court a proper undertaking, with satisfactory surety, which was approved by the said Court, in the said sum of \$10,000, which undertaking was conditioned for the faithful discharge of his duties, and he thereupon duly took the oath as such Receiver and entered upon the duties of said receivership.

4. That he immediately appointed Frank R. Wehe, an attorney, counselor and solicitor of said court, as his attorney, counsellor and solicitor herein, and thereafter and on the 23d day of February, 1918, duly took possession of the office of said Presidio Mining Company and of all of its funds, property, books of account and all papers and other matters recording the business of said corporation in the City and County of San Francisco.

5. That he also immediately appointed Fred C. Handy as his representative, to take possession of, manage and control the property of said corporation in Texas.

6. That thereafter and on the 4th day of March, 1918, together with his said representative, Fred C. Handy, and his said attorney, Frank R. Wehe, he proceeded to the City of El Paso, Texas, and on the motion of and by ancillary proceedings initiated by complainants, the District Court of the United States, for the Western District of Texas, at El Paso, by its order and interlocutory decree duly entered in the ancillary suit No. 114—Equity of W. S. Overton et al., complainants, vs. said Presidio Mining Company, et al., duly appointed him the [169] Ancillary Receiver in said District and State of Texas, with the same power as contained in the order of his appointment here; that he immediately qualified under said order and then proceeded to the town of Shafter, in the county of Presidio, State of Texas, and took possession, charge and management of all of the property of said Presidio Mining Company in the said County of Presidio, State of Texas, a full inventory of which property is annexed hereto and marked Exhibit "A," said Exhibit "A" comprehending all of the property described in said order of February 20th, 1918, entered in this court as the mining and milling property of said Presidio Mining Company.



# RECEIPTS.

7. That he also took charge and possession of the following sums of money and bonds:

Bonds, Second Liberty Loan.....	\$ 25,000.00
Cash on deposit in the Anglo & London Paris National Bank, S. F. ....	\$30,247.60
Cash on deposit in the Wells Fargo Nevada National Bank, S. F. ....	28,070.67
Cash on deposit in the Marfa National Bank, Marfa, Texas—General account..	30,777.73
Special account .....	15,300.00
Cash in office at Shafter ....	1,352.93 \$105,748.93

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(NOTE.—In the above item cash in the Marfa National Bank, Marfa, Texas, \$30,777.73, is included the sum of \$10,000 transferred by the Receiver from San Francisco on February 25th, 1918, after taking possession of the said cash in San Francisco, which would leave the net cash as taken possession of by the Receiver the sum of \$95,748.93.)

8. That he has ever since continued in the man- agreement and control of all of said property and has maintained and kept in repair the whole thereof, and is now in possession of the [170] whole thereof.

9. That he has continued to work and mine and mill the ores from said property, and the following is a statement of the production of the same by months in fine ounces of silver, and the net bullion

value of the product of said mine in cash by months during said receivership from the said 23d day of February, 1918, to and including the 23d day of October, 1918, and also cash received on sale of lead ore:

1918	Ounces.	Av. Sell. Pr.	Cash Received.
Feb. 23 to Mar. 18	38,205.60	\$0.8557	\$ 31,753.22
Mar. 18 to Apr. 18	51,580.37	0.92071	46,192.88
Apr. 18 to May 17	50,421.32	0.99192	48,757.24
May 17 to June 15	50,140.24	0.9949	49,472.12
June 17 to July 16	52,576.66	0.99555	51,004.18
July 19 to Aug. 16	50,874.72	0.995 $\frac{7}{8}$	49,540.01
Aug. 16 to Sep. 17	64,967.56	1.011 $\frac{1}{8}$	64,128.51
Sep. 17 to Oct. 23	45,409.30	1.011 $\frac{1}{8}$	44,733.56
July 25, Lead ore			7,483.94
			<hr/>
			\$393,065.66

(NOTE.—The above cash receipts of bullion are in each instance the net amounts after the Selby Smelting & Lead Co. has deducted the expressage on the bullion from Marfa, Texas, and refining charges.)

10. That at the time of taking possession of said different accounts in said banks in San Francisco, none of said accounts were drawing interest. That arrangements were made whereby interest was paid on \$30,000 of said account on deposit in said Anglo & London Paris National Bank for two months, and arrangements were also made whereby on September 18th, 1918, said account was transferred from said Wells Fargo [171] Nevada National Bank to the Mercantile National Bank of San Francisco, it being arranged with said latter named bank that

your Receiver should have all accommodations without expense in the purchase of foreign exchange for transfer to the Marfa National Bank in order to continue the fund there for the use of the mining operations at Shafter, Texas, and that interest at two per cent per annum should be allowed for daily balances, to be credited as of the 25th day of each month. Under these different arrangements with said banks and on the bonds held by the Receiver, mentioned above and hereafter mentioned, there has been collected on interest account the following sums:

1918.

May 16—First coupon, Second Issue of \$25,000 Bonds .....	\$ 500.00
Sept. 18—First coupon, Third Issue of \$60,000 Bonds .....	894.00
Interest on \$30,000 deposit, two months, Anglo and London Paris National Bank .....	100.28
Aug. 1—Interest on Special Deposit, Marfa National Bank, \$15,300 .....	306.00
Sept. 25—Interest on daily balances, seven days, Mercantile National Bank .....	27.05
<hr/>	
Total .....	\$1827.33

11. That there have been miscellaneous receipts as follows:

Sale of old typewriting machine .....	\$ 25.00
Rebate on Railroad Scrip book and ex- penses of travel by receiver .....	183.16

From sundry sales at Shafter of scrap iron, etc. ....	1110.87
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Total .....	\$1319.03
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[172]

## DISBURSEMENTS.

12. That under order of this Court and with the consent of the parties, the Receiver has made the following investments in Liberty Bonds, War Savings Stamps, and United States Loan Certificates, in addition to the \$25,000 of which he took possession at the commencement of his receivership, the place of subscription being mentioned:

Third Issue, San Francisco .....	\$ 50,000
Third Issue, Marfa, Texas .....	10,000
Fourth Issue, Marfa, Texas .....	50,000
Fourth Issue, San Francisco .....	15,000
War Savings Stamps, June 25, 1918, San Francisco (\$500 par value) .....	417
War Savings Stamps, June 25, 1918, Marfa, Texas (\$500 par value) .....	417
U. S. Loan Certificate, Aug. 6, 1918 .....	60,000

Total .....	\$185,834
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13. That all of said securities, including the \$25,000 Liberty Bonds taken possession of at the commencement of the receivership, except the Fourth Liberty Bonds, which have not yet been received, have been deposited in the Safe Deposit Vaults of the Wells Fargo Nevada National Bank with the understanding that none of said securities shall be taken from the Bank except in the joint presence of the Receiver and agent of the National

Surety Company, the surety on the Receiver's bond.

14. That in May, 1918, with the consent of the parties to said action and upon the order of the Court therefor, there was donated to the Red Cross on its second drive the sum of ..... \$1000.00  
[173]

15. That the total expenses for mining, milling, general expense, and supplies at Shafter, Texas, by months, including the entire month of February, 1918, up to and including the month of September, 1918, and the office expense in San Francisco for each of said months, to all of which is attached a comparative statement of the same expenses during the previous year of 1917 for the same months, are as follows:

For the month ending Feb. 28, 1918.

Total mine expense	\$14,087.03
Total mill expense	10,669.35
General expense	2,932.65
Supplies	1,782.82
Plant	1,228.76
San Francisco office	256.05

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\$30,956.66

For the month ending Feb. 28, 1917

Total mine expense	\$14,285.40
Total mill expense	10,814.56
General expense	2,254.04
Supplies	652.22
San Francisco,	1,448.45

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\$29,454.67

For the month ending Mar. 31, 1918.

Total mine expense	\$13,560.24
Total mill expense	12,901.31
General expense	2,305.78
Supplies	751.05
Plant	15.10
San Francisco office	11,839.99

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\$41,373.47

For the month ending Mar. 31, 1917.

Total mine expense	\$12,727.68
Total mill expense	10,530.19
General expense	3,238.65
Supplies	730.95
San Francisco office	1,091.25

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\$28,318.72

For the month ending April 30, 1918.

Total mine expense	\$13,219.69
Total mill expense	9,138.90
General expense	2,415.05
Supplies	2,935.78
Plant	150.77
San Francisco office	1,340.01

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\$29,200.20



For the month ending Apr. 30, 1917.

Total mine expense	\$13,015.00
Total mill expense	11,699.20
General expense	8,147.67
Supplies	29.53
San Francisco office	889.85
	<hr/>
	\$35,781.25

[174]

For the month ending May 31, 1918.

Total mine expense	\$12,963.23
Total mill expense	11,344.43
General expense	2,218.59
Supplies	1,209.72
Plant	1,426.94
San Francisco office	2,376.42
	<hr/>
	\$31,539.33

For the month ending May 31, 1917.

Total mine expense	\$14,177.14
Total mill expense	9,830.44
General expense	6,298.57
Supplies	4,681.08
San Francisco office	2,247.60
	<hr/>
	\$37,234.83

For the month ending June 30, 1918.

Total mine expense	\$12,211.81
Total mill expense	11,688.23
General expense	2,056.91
Plant	9,260.52
San Francisco office	617.33

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\$35,834.80

For the month ending June 30, 1917.

Total mine expense	\$11,527.76
Total mill expense	11,678.32
General expense	11,658.29
Supplies	2,232.99
San Francisco office	1,333.31

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\$38,430.67

For the month ending July 31, 1918.

Total mine expense	\$12,828.65
Total mill expense	\$12,051.06
General expense	2,578.93
San Francisco office	767.45

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\$28,226.09

For the month ending July 31, 1917.

Total mine expense	\$11,198.19
Total mill expense	11,823.44
General expense	8,776.90
Supplies	8,160.76
San Francisco office	824.75

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\$40,784.04

For the month ending Aug. 31, 1918.

Total mine expense	\$12,603.29
Total mill expense	10,425.42
General expense	2,132.78
Supplies	4,372.02
Plant	198.40
San Francisco office	738.18

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\$30,470.09

For the month ending Aug. 31, 1917.

Total mine expense	\$14,876.63
Total mill expense	12,106.19
General expense	9,709.84
Supplies	2,359.65
San Francisco office	1,245.20

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\$40,297.51

[175]

For the month ending Sept. 30, 1918.

Total mine expense	\$11,112.43
Total mill expense	12,589.03
General expense	2,063.45
Plant	1,047.50
San Francisco office	586.68

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\$27,399.09

For the month ending Sept. 30, 1917.

Total mine expense	\$12,239.04
Total mill expense	10,709.67
General expense	14,332.90
Supplies	4,218.23
San Francisco office	1,794.01
	<hr/>
	\$43,293.85

15. That in addition to the above expenditures there has been expended at San Francisco for the month of October to date the sum of.....\$1,253.07

16. That in addition to this last expenditure, the Receiver has remitted to Shafter the sum of .....\$10,000.00

(NOTE.—In the above accounts the expense of the San Francisco office for March, 1918, during the administration of the Receiver on its face seems unusual. However, included in the amount of \$11,839.99 is the sum of \$10,623 for taxes, which includes a portion of the Income Tax of the Presidio Mining Company for 1917 paid by the Receiver, and also includes traveling expenses of the Receiver, his attorney and representative to Marfa, Texas.

It also should be noted that the disbursements for February, 1918, include both the disbursements of the receivership and those of the Company for that month, which at this time have not been adjusted and will not be until the books are audited.)

# SUMMARY OF RECEIPTS FROM THE FORE- GOING ACCOUNTS.

Cash received at the commencement of receivership .....	\$95,748.93
Bullion receipts during receivership .....	393,065.66
Miscellaneous receipts .....	1,319.03
Interest received during receivership ..	1,827.33

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Total cash received .....\$491,960.95

[176]

17. That the total amount of disbursements cannot be summarized at this time so as to show the true balance for the above reason that the February disbursements of the Company and Receiver have not yet been segregated, and for the further reason that the reports for expenditures at the Mine for October have not yet been received.

18. That there was on hand in cash on October 23d, 1918, in San Francisco, the following sums:

Mercantile National Bank .....	\$31,288.58
Anglo & London Paris National Bank ..	347.88

That there was on hand in Texas on

October 1st, 1918, as appears by the balance sheet received from the Mine on October 15th, 1918, a balance of cash, including a general deposit in the Marfa National Bank and cash

in safe.....	16,068.94
Special Deposit in Marfa National Bank	15,606.00

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Total ..... \$63,311.40

(NOTE.—The Marfa Bank balances as they exist at the time of this report cannot be given for the reason that statements will not be received from Shafter until the middle of this month.)

#### SECURITIES ON HAND.

Liberty Bonds, Second Issue .....	\$25,000
Liberty Bonds, Third Issue .....	60,000
Liberty Bonds, Fourth Issue .....	65,000
War Savings Stamps .....	834
U. S. Loan Certificates .....	60,000

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Total .....\$210,834

19. That bullion shipments to Selby Smelting & Lead Co. and in transit cannot be accounted for until reported by the Selby Company. [177]

#### OTHER PROPERTY IN POSSESSION OF RECEIVER ON OCTOBER 1st, 1918.

20. That annexed hereto and marked Exhibit "B" is an inventory of the real estate, buildings, equipment and machinery, etc., and supplies belonging to the Presidio Mining Company and in the possession of the Receiver on October 1st, 1918, all of which is still in the possession of the Receiver, except supplies used in due course, but the inventory does not comprehend all of the supplies etc. in transit on orders and property at Marfa not yet delivered at the Mine. This would include supplies in the depot at Marfa, a new engine purchased in New York at an expense of \$8500 and other property.

21. That it will appear from the two inventories, Exhibits "A" and "B" that the total cost of



all supplies in Inventory "A" was \$43,867.53 and that of Inventory "B" \$38,422.15, a difference of \$5,445.38. Most of this difference, however, is accounted for in the item of cyanide, there being on hand at the time the Receiver took possession cyanide of the cost price of \$10,023.14 and on October 1st, 1918, cyanide of the cost price of \$4852.90. It was therefore unnecessary to purchase a further supply, and there was on October 1st on hand sufficient cyanide to run over three months.

### IMPROVEMENTS.

#### New Oil Engine.

22. That under order of this Court the Receiver has purchased a new De La Vergne Engine, oil burning type, 144 h. p. for the sum of \$8500. f. o. b. New York. This engine was purchased second-hand, after having been thoroughly inspected and repaired under the direction of mechanical experts in New York employed by the Receiver and pronounced by them to be in good shape. That at the time of the purchase this matter was thoroughly [178] investigated and it was found that a new engine would cost something over \$15,000.

The first mentioned engine is now at the mine and is being installed. It was necessary to purchase this engine for the reason that the engines at the mill were overloaded, and it is estimated that the new engine added to two of the present engines at the mine will not only decrease the overload but will materially cut down the cost of operation and will prevent many stoppages of the mill due to necessary

repair to the old engines on account of the overload, and will dispense with the old steam engine.

New Classifier.

23. That there has also been added and installed an 8-foot Allen Cone for classification purposes to replace a former 5-foot Cone which was too small and not a satisfactory machine in other respects. The new Cone is giving better results.

Electric Hoist.

24. That the East Shaft Hoist which in the past was operated by steam has been converted into an electric driven hoist. Part of this equipment was on the ground when the Receiver took over the property and the balance necessary for the change has been added. This change will cut down the cost of operation on account of the scarcity of wood for the former steam boiler. This matter was in contemplation by the Presidio Mining Company prior to the receivership.

Air Compressor.

25. That on the 400-foot level a 50 h. p. motor and new compressor has been installed and the same is now being wired from the generator. This will provide more air in the lower levels [179] and increase the efficiency of the work in general.

Hospital.

26. That under orders of this Court the Receiver obtained authority to construct a Hospital Building, and this work is now in progress. It is a lath and plaster building, with an operating room, examination and dressing-room, office and bedchamber for the doctor, two rooms that will each hold two hos-

pital beds, one ward room that will hold from four to six hospital beds, bathroom, toilet and diet kitchen. The building in the rear surrounds a patio, around which is plenty of porch room, all under cover. This was a much needed improvement owing to the fact that in case of an accident to any of the employees of the mine or mill the injured person would have to be cared for in his own home, which is usually an adobe shack with practically no ventilation, with dirt floors, crowded and unsanitary. The total cost of the building will be about \$4000. By building this hospital at this time and providing rooms for the doctor, the Company is given the use of a three-room cottage with bathroom, which is owned by the Company and which can be used for a married employee.

#### New Apartments.

27. That on account of the Draft taking many single men into the Army, it was found necessary to hire married men and to provide quarters. At the new Club House two three-room apartments have been arranged for single rooms, and two bath-rooms built, with bathtubs and toilets provided in each. This has provided comfortable light housekeeping apartments for the bookkeeper and one of the engineers.

28. In addition, a two-room apartment was also arranged for the master mechanic, who was married in June. [180]

29. A new roof has been put upon the cottage occupied by the nightwatchman. On account of the

roof being out of repair the house was almost uninhabitable during stormy weather.

#### New Map.

30. That material for a new map has been purchased and the engineer at the mine is now engaged in the work of making a correct and up-to-date map of the Mine.

#### Telephones.

31. That telephones have been purchased for the lower levels, which will be installed so as to give communication to the different parts of the Mine by telephone.

#### Tramway Repairs.

32. That a heavier sheave wheel for the tramway has been purchased and heavy "I" beams for the mill tramway terminal, all for the purpose of adding to the safety of the system.

#### Shafter Creek Crossing.

33. That a concrete crossing or dip across Shafter Creek and between Shafter and Marfa has been constructed. This crossing is 455 feet in length and 12 feet wide. It is heavily reinforced where the main current of the creek flows and iron stakes with a cable rail put in at the current points. Along the whole length of the concrete work iron stakes have been placed to mark the location of the crossing. The width of the creek is such that a bridge is not practicable and it is a rare occurrence—only happening during stormy weather—that there is any quantity of water in the creek, but it sometimes happens in time of heavy rains that the creek cannot be crossed for about ten days, thus interrupting

the communication with Marfa, hence the improvement, by means of which the creek will be, ordinarily, passable. The expense of this improvement [181] was shared by the County and the United States, but on the initiative, however, of the officers at the Mine. The cost did not exceed \$400.

#### Machine Drills.

34. That prior to the possession of the Receiver most of the drilling in the mine was hand drilling, but at the commencement of the receivership the Company management had commenced the installation of machine drills. This has been continued by the Receiver and at the present time the Mine is well equipped with mine drills, which have materially reduced the cost of mining.

#### GENERAL REPAIRS.

35. That all of the ordinary and extraordinary repairs necessary to the efficiency of the machinery and works at the Mine have been kept up, and with the exception of natural and ordinary depreciation and wear and tear, the property is in first-class shape, and, due to the progress of the times, to some extent better than when possession was taken.

#### INCREASE IN WAGES.

36. That the greater proportion of the employees at the mine are Mexicans, a large proportion of them ignorant, and while many of them are citizens, they are not patriotic, and the Draft Law caused many of them to cross the Border into Mexico, so that it was necessary to offer inducements to keep this class of laborers. In addition to this con-



dition the railroads had increased wages for unskilled labor and other mining propositions were offering higher wages than were being paid at the mine; and men were drifting away at such a rate that the management was short-handed for labor. Again, the increased price of living had increased the expense of the skilled labor. In view of all [182] these circumstances it was necessary to increase wages at the Mine and a graduated increase was made of the help in the mine and mill with some few exceptions,—that is to say, all employees getting \$1.75 were increased to \$2.00 per day; others 50c per day, making the total increase on the pay-roll of \$1727.50 per month. No increase was given to the Receiver's representative, superintendent, mill foreman, assayer, bookkeeper, night watch or guard, and annexed hereto, marked Exhibit "C," is a list of all the employees, with their nationality, former wages and increase.

#### GENERAL MATTERS AT THE MINE.

37. That for the purpose of improving the general health of the employees about 350 persons at Shafter have been vaccinated and quite a number inoculated for typhoid, all at the expense of the receivership.

#### CIVIC MATTERS.

38. That a large proportion of the Mexican population of Shafter, all of whom depend upon the Mine for their support, and which furnish a large proportion of the unskilled labor and some of the skilled, are Catholics, and there is a Catholic



Church at the Mine, with a Priest and Sisters of Charity attending, all of whom do many acts of kindness, both spiritual and material for these people. With this in view and for the purpose of promoting this good work, the Receiver has furnished the Church, parsonage and Sisters' quarters with electric current, and also the privilege of attaching to the water main. The expense of this is slight, and it has pleased the inhabitants of the town to such an extent that the material benefit much exceeds the value of the service.

39. That in addition to this, the Receiver's representative at the Mine, Mr. Handy, has devoted some of his time to [183] taking part in the civic matters of the County in general, except political, and at the last Liberty Loan drive was appointed chairman of the Liberty Loan Committee for the Shafter District of the County of Presidio, and your Receiver is pleased to report that Mr. Handy has not only fulfilled all of his duties at the Mine with more than ordinary ability and tact, but has also won for himself the commendation of the citizens of Marfa and vicinity for his activities on behalf of the community, all of which redounds to the benefit of the mining operations of the Presidio Mining Company.

#### CHANGE IN PERSONNEL OF EMPLOYEES.

40. Under this heading there are but two important changes to report. The bookkeeper was drafted and a new bookkeeper secured, who is performing all the duties required of him. Also,

although Mr. E. M. Gleim, who was Superintendent of the Mine when the Receiver took charge and who is still in charge, has been efficient under the Receiver, still matters have occurred which have caused your Receiver to believe that it is necessary to require his resignation, and a letter has been written him asking for the same. It is not expected that this will materially effect the management at the Mine for the reason that Mr. Handy is now capable of performing all these duties without the assistance of a superintendent.

#### ACTIONS.

41. Only one action has been commenced against the Receiver. This is the action of Constance Mills Overton, et al., vs. W. S. Noyes, et al., Equity No. 421, now pending in this Court. Your Receiver was made a party to this action for the reason that he formally refused to bring the action in that it involves an accounting with reference to matters occurring long prior to the receivership, and it is understood that the [184] Receiver was made a party simply for the purpose of obtaining his refusal so as to give complainant the right to sue the Presidio Mining Company.

The Receiver has not been compelled to prosecute or defend any other actions.

#### AUDITOR AND SIMPLIFICATION OF ACCOUNTS.

42. Demand has been made upon the Receiver to appoint an Auditor to audit the books and accounts of the Presidio Mining Company, and it is

assumed including the accounts of the Receivership, and for this purpose the Receiver has petitioned this Court for the appointment of such auditor, and it is suggested that it is proper that such auditor be appointed and that not only the books and accounts prior to the receivership should be audited, but it is requested that the order be broad enough so as to have the auditor examine and audit all of the accounts of the receivership, and also that the auditor be authorized to suggest a simpler method of accounts, reports, etc. at the Mine for the use of the office in San Francisco. When the Receiver took possession a rather complex system of accounting and reporting was being used by the different officers and has been continued during the receivership. It may be that these are as good as can be devised, but an auditor may possibly simplify the matter with benefit to the receivership and the company.

The audit of the books of the Receiver at this time will permit the Receiver to make a full and complete financial statement of the affairs of the receivership at the conclusion of this year, and will furnish the necessary facts for making the Income Tax Return for the Presidio Mining Company.  
[185]

#### RECEIVER'S AND ATTORNEY'S FEES.

43. Inasmuch as it is probable the receivership will continue through the present year and over into the next year, and that it will be necessary for the Receiver to file an Income Tax return for the

Company covering the net income during the present year, which will include more than ten months of the Receiver's administration thereof as a basis for the income tax, and that it would be but just to the Company's affairs that the present year should have all of the proportionate and proper costs of the receivership for the year included as a deduction in the return, it is suggested that a proportionate amount of the fees of the receiver and his attorney to date be allowed at this time.

WHEREFORE your Receiver prays that all of this report, except the tentative financial statements, be approved and that the Court fix and allow to the Receiver and his attorney a reasonable fee each for their services to date.

Respectfully submitted,  
WALTER B. MALING,  
Receiver, Presidio Mining Company.  
FRANK R. WEHE,  
Attorney. [186]

### **Exhibit "A."**

#### **PRESIDIO MINING COMPANY.**

INVENTORY of Real Estate, Buildings, Equipment and Machinery, etc., belonging to Presidio Mining Company, and taken over by Walter B. Maling, Receiver, on March 7th, 1918.

#### **Real Estate.**

Section 8.	Containing 640 acres.
Section 5.	Containing 640 acres.
Tailings Dump.	Containing 26.41 acres.
Tramway line.	Containing 37.00 acres.
Mill Site.	Containing 73.87 acres.

Buildings.

- 1 Mill Building, galvanized iron sides and metal roof, containing the following machinery and equipment:
  - 1 tramway terminal, with weight boxes.
  - 1 steel ore bin & shaking screens, 550 ton capacity.
  - 1 wooden water tank, 10,000 gallons capacity.
  - 2 condensers.
  - 1 steel hot water tank.
- 15 stamp battery, complete, 1150# stamps.
  - 1 steel battery storage tank, 14'x8'.
  - 2 Dorr thickeners, complete, 30'x10' with motors.
  - 1 Ingersoll-Rand air compressor, 12"x12".
  - 1 Marsh air compressor, 10"x12".
  - 2 circulating pumps, 21½"x3", with motors.
  - 1 cone classifier.
  - 1 Worthington D. C. fire pump, 9"x4"x10".
- 3 Steam boilers, 54 ft. x 16 ft. with feed pumps, etc.
  - 1 Ingersoll-Rand air compressor & Rec. 10"x10".
  - 1 Corliss steam engine, 125 h. p.
  - 1 Westinghouse electric generator, 37 K. W. 115 V.
- 1 General Electric generator, 20 K. W. 115 V.
- 1 De La Vergne oil burning engine, 100 h. p.
- 1 De La Vergne oil burning engine, 160 h. p.
- 2 bucket elevators, 55 ft. lift.
- 2 steel tube mills, each 4'-6"x18'.
- 2 screw classifiers and conveyors.
- 2 Oliver continuous filters, each 11'-6"x14'.
- 1 steel tank for sulphate.
- 1 steel sump tank, 18'x5'.

- 4 steel Pachuca agitating tanks, 14'x28'.
- 2 steel clarifying tanks, each 16'x4'.
- 1—6 comp. metal zinc boxes, with motor.
- 3—6 comp. metal zinc boxes.
- 5—8 comp. wooden zinc boxes.
- 1 Donaldson melting furnace, with motor & blower. [187]

Mill Building (continued).

- 1 reverbatory simplex melting furnace.
- 2 Deming triplex pumps, 4"x6".
- 1 steel oil storage tank, 17 bbl. for melting room.
- 1 steel oil storage tank, 17 bbl. for engine room.
- 1 steel clean up tank, 4'x5'.
- 6 steel fuel oil storage tanks, 109 bbls. each capacity, all with line and countershafts, clutches, pulleys, belting, piping, wiring, etc.
- 1 office building, 3 rooms, with furniture, records, etc.
- 1 supts. residence, 5 rooms & bathroom, with furniture.
- 1 cottage, 4 rooms & pantry, occupied by F. Russell.
- 1 boarding-house building, 4 rooms.
- 1 doctor's office and drug store, 2 rooms.
- 1 cottage, 3 rooms & bathroom, occupied by surveyor.
- 1 cottage, 3 rooms, occupied by doctor.
- 1 cottage, 5 rooms, occupied by R. Speed, guard.
- 1 cottage, 3 rooms, occupied by W. Speed, night-watch.



- 1 cottage, 3 rooms & bathroom, occupied by M. W. Kahoe, malter.
- 1 cottage, 4 rooms & bathroom, occupied by A. Driffil, battery man.
- 1 cottage, 4 rooms & bathroom, occupied by F. H. Pomeroy, Mill man.
- 1 cottage, 4 rooms & bathroom, occupied by M. Shapleigh, Shift boss.
- 1 cottage, 3 rooms & bathroom, occupied by S. E. Manning, engineer.
- 1 cabin, 1 room, occupied by S. E. Manning, engineer.
- 2 club houses, containing 1 social hall, 2 bathrooms, and 17 bedrooms, partly furnished.
- 1 finished adobe garage, new.
- 1 galvanized iron garage.
- 1 corral and sheds.
- 1 shoe shop, rented.

#### Pumping Plant.

- 1 galvanized pump-house.
- 1—6"x8" Dean triplex pump and water line.
- 1—10 h. p. electric motor, with starting equipment.
- 1 wooden building, containing,
- 2 steam pumps and steam line.
- 1 wooden building for lime.
- 1 wooden building for cyanide.
- 1 wooden building for fire hose and hose cart.
- 1 wagon scales.

At Marfa, Tex. (R. R. Station)

6 steel oil storage tanks, 109 bbls. each capacity.  
Mine.

- 1 new metal lath & plaster power-house building, containing,
- 2 De La Vergne oil burning engines, 120 h. p. each, complete with starting equipment. [188]

Mine (continued).

- 1 Ingersoll-Rand Compressor, 15 and 9x15, with receiver.
- 1 electric generator, 90 K. W. with switchboards.
- 1 metal lath & plaster building, for storehouse and shop.
- 1 metal lath & plaster building, pumphouse, with pump and motor.
- 2 cooling water towers and tanks.
- 1 concrete water tank.
- 1 galvanized iron building, containing steel oil storage tank.

CORE DRILL.

- 1 F—3 Calyx drill and equipment, with gas engine, this drill equipped to go 800 feet.

EAST SHAFT HOISTING PLANT.

- 1 wooden head frame, complete.
- 1 galv. iron building containing
  - 1 Gates double steam drum.
  - 1 steam boiler and feed pump.
  - 2 cages, and steel hoisting rope.
- 1 stone building for blacksmith-shop, with forge, drill, press, blower, etc.
- 1 stone building for grinding samples, with gas engine, sample crusher and pulverizer, etc.
- 1 stone building for round house for Ford locomotives.
- 1 galvd. iron building for storage of carbide.

1 galvd. iron building containing rock crushers, ore bin, two oil burning engines, pump and gas engine.

1 tramway terminal complete.

5200 ft. double steel rope tramway and 12 towers to support same.

1 telephone line and instruments, for tramway line.

#### SOUTH SHAFT HOISTING PLANT.

1 mine office building.

1 cottage for mine foreman, 5 rooms and bath-room.

2 cottages for miners, 3 rooms each.

1 frame cottage, 1 room.

1 map-room building, with office for surveyor, two vacant rooms.

Several adobe shacks, about 20 in number, occupied by Mexicans.

1 wooden head frame and wooden ore bin.

1 building containing,

1—35 h. p. W. C. gas engine, and hoist and steel rope.

1 building containing,

1 drill sharpener, and oil forge.

1 rock garage building.

1 building for carbide storage.

1 building for fuse and caps.

1 wooden building, for general storage purposes.

[189]

#### JOINT TUNNEL.

1 wooden ore bin.

1 corral and sheds.

## SHAFT NO. 4.

- 1 wooden head frame.
- 1 wooden ore bin, 10 ton capacity.
- 1 building containing,
- 1—6 h. p. gas engine and hoist.
- 1 building for blacksmith-shop.

## UNDERGROUND HOIST.

- 1 head frame, wooden.
- 1—6 h. p. gas engine and hoist.

## MAGAZINES.

- 3 powder magazines, for powder storage.

## SURFACE HAULING SYSTEM.

5200 ft. 24" gauge track.

- 2 Ford motors, used as locomotives.
- 5—2 ton side dump ore cars.

## UNDERGROUND WORKINGS.

About 24 miles of tunnels, drifts, cross-cuts, etc., with track, ore cars, buckets, pipe-lines, windlasses, ladders, chutes, mining tools, etc. [190]

## PRESIDIO MINING COMPANY.

INVENTORY of Supplies on Hand March 1st,  
1918.

Articles.	Amount.	Cost.
MINE.		
Powder,	367 boxes	\$3493.84
Fuse	39500 ft.	209.35
Caps	10200	129.34
Caps-elec.	4600	249.00
Igniters	3000	158.09
Carbide	8000 lbs.	569.66

Articles.	Amount.	Cost.
Lamps, carbide, min- ers,	49	111.74
Coal, blacksmith's	15.35 tons	450.65
Cement,	<hr/>	<hr/>
Drill steel, hand,	130 bars.	724.14
Drill steel, machine,	30 bars	706.20
Pick steel,	10 bars	32.48
Pick handles,	11 doz.	34.21
Hammer handles, 36"	15½ doz.	31.20
Hammer handles, 18"	72 doz.	52.10
Shovels, round pt.	11½ doz.	25.54
Atlantic red oil,	40 gal.	15.12
Cup grease #3	55 gal.	28.35
Capital Cylinder oil,	<hr/>	<hr/>
Summer black oil,	150 gal.	34.17
Polarine,	130 gal.	68.24
Ursa gas engine oil,	<hr/>	<hr/>
Gasoline,	125 gals.	35.63
Coal oil,	442 gals.	68.08
Black pipe, 3"	49 pcs.	606.42
Crusher shoes, Sturte- vant,	2	125.50
Crusher dies,	2	143.50
Crusher cheek plates,	2	24.00
Crusher shoes, E. P. Fdry.	6	215.97
Crusher dies,	3	124.08
Rails,	8	15.60
Splices,	558	22.32
Track cable,	5600 ft.	2521.82
Compressor pump,	1	1316.64

Articles.	Amount.	Cost.
In transit.		
Cotton waste,	2 bales	35.20
Carbide,	700 lbs.	40.95
Ore buckets,	8	320.00
Electric motor, 50 h. p.	1	700.00
Fuse,	3 cases,	130.30
Polarine oil,	1 bbl.	24.81
MILL.	<hr/>	<hr/>
		13594.44

Stamps.		
Boss-heads.	4	155.54
Cams,	1	32.35
Cam-shafts-10st.	3	525.20
Cam-shafts-5st.	3	352.05
Dies,	41'	463.22
Shoes,	19	375.97
Tappetts,	4	81.72
Liners, back	18	196.83
[191]		

## MILL (Continued).

Stamps.		
Liners, end	10	\$58.60
Liners, front	<hr/>	<hr/>
Spouts,	3	65.80
Tube Mills.		
Pebbles	111340 lbs.	1383.95
Steel balls,	19500 lbs.	1113.03
Spirals, conveyor	110	62.66
Cyanide,	26400 lbs.	10023.14
Lime,	27080 lbs.	135.30
Sulphate-Ferrous,	4800 lbs.	210.20



Articles.	Amount.	Cost.
Thickener-gears,	2	72.91
Belt-14"x11 ply, H. S.	2	807.45
Mercury.		
Zinc shavings,	7700 lbs.	2003.14
Borax glass,	4950 lbs.	1124.23
Bi-carb. soda,	2727 lbs.	154.07
Crucibles, melting,	2	67.00
Fire clay,	5 sks.	10.75
Power		
Cylinders, Eng. D-204		
(cylinder heads)	1	600.00
Cylinder linings,	1	215.00
Pistons,	1	230.00
Compressor cylinder,	1	100.00
Compressor pistons,	1	50.00
Miscellaneous parts,		180.90
Cylinder heads, Eng.		
D-398	2	565.92
Cylinder linings,	1	160.00
Pistons,	1	200.00
Compressor Cylinders,	1	150.00
Compressor pistons,	1	60.00
Miscellaneous parts,		180.20
Electric lamps, 25 Watt	40	9.30
Ursa gas engine oil,	4 bbls.	100.00
Capital cylinder oil,	1 bbl.	27.44
Albany compound,	2 bbls.	128.68
Oilite,	3 bbls.	87.60
Cotton waste,	2 bales	36.73
Belt dressing,	25 lbs.	10.97
Transmission rope,	1300 feet	358.90

Articles.	Amount.	Cost.
Babbitt,	100 lbs.	66.03
Cement,	53 sks.	68.11
Salt,	1 ton	16.50
Belts, 4"x5 ply,	75 ft.	31.37
Belts, 6"x6 ply,	96 ft.	74.18
Belts, 8"x6 ply,	110 ft.	100.89
Belts, 10"x8 ply,	170 ft.	170.92
Belts, 10"x7 ply,	110 ft.	141.23
Belts, 12"x8 ply,	110 ft.	225.33
In transit.		
Stamp stems,	4'	207.05
Tube mill lips,	12	12.28
Back liners,	10	147.43
Spirals,	9	4.28
Albany compound,	1 bb.	57.30
Belt, Inv. 12"x6 ply,	110 ft.	165.55
[192]		

## MILL (Continued).

In transit.		
Belt, 6"x5 ply	100 ft.	62.30
Belt, 4"x4 ply	100 ft.	35.00
Pebbles,	20 L tons.	400.00
End liners,	2	12.65
Boss heads,	2	50.00
Spirals, C. I.	97-	89.44
Semi-steel conv. spirals,	29	13.60
Steel tube mill balls,	32300 lbs.	1426.75
Feed slot liners,	2	29.26
Belt dressing	100 lbs.	42.00
Cotton waste,	2 bales	33.54
Albany compound,	1 bbl.	55.35

Sledge handles,	3 doz.	6.84
Filter screen,	1	151.20
Pebbles,	21 tons	521.96
Fire clay,	10 sks.	10.00

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28087.03

Fuel Account.

Wood,	22 cds.	148.50
Fuel oil,	581.9 bbls.	2037.56

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2186.06

Total of all supplies, \$43867.53

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[193]

**Exhibit "B."**

**PRESIDIO MINING COMPANY.**

INVENTORY of Real Estate, Buildings, Equipments and Machinery, etc., Belonging to Presidio Mining Company, on October 1st, 1918.

**Real Estate.**

Section 8,	Containing 640 acres.
Section 5,	Containing 640 acres.
Tailings Dump,	Containing 26.41 acres.
Tramway Line,	Containing 37.00 acres.
Mill Site,	Containing 73.87 acres.

**Buildings.**

1 Mill Building, galvanized iron sides and metal roof, containing the following machinery & equipment:

1 tramway terminal, with weight boxes.

1 steel ore bin & shaking screens, 550 ton capacity.

- 1 wooden water tank, 10,000 gallons capacity.
- 2 condensers.
- 1 steel hot-water tank.
- 15 stamp battery complete, 1150 lb. stamps.
- 1 steel battery storage tank, 14'x8'.
- 2 Dorr Thickeners, complete, 30'x10', with motors.
- 1 Ingersoll-Rand air-compressor, 12 $\frac{1}{4}$ "x12".
- 1 Marsh air-compressor, 10"x12".
- 2 circulating pumps, 21 $\frac{1}{2}$ "x3", with motors.
- 1 Allen cone classifier, 8' dia.
- 1 Worthington D. C. fire pump, 9"x4"x10".
- 3 steam boilers, 54'x16', with feed pumps, etc.
- 1 Ingersoll-Rand air-compressor & receiver, 10"x10".
- 1 Corliss steam engine, 125 h. p.
- 1 Westinghouse electric generator, 37 K. W. 115 V.
- 1 General Electric generator, 20 K. W. 115 V.
- 1 De La Vergne oil burning engine, 100 h. p.
- 2 De La Vergne oil burning engines, 140 h. p. each.
- 2 bucket elevators, 55 ft. lift.
- 2 steel tube mills, each 4'-6"x18'.
- 2 screw classifiers and conveyors.
- 2 Oliver continuous filters, each 11'-6"x14'.
- 1 steel tank for sulphate.
- 1 steel sump tank, 18'x5'.
- 4 steel Pachuca agitating tanks, 14'x28'.
- 2 steel clarifying tanks, each 16'x4'.
- 1—6 compartment metal zinc boxes, with motor.
- 3—5 compartment wooden zinc boxes.

5—8 compartment wooden zinc boxes.

1 Donaldson melting furnace, with motor and blower.

1 reverbatory simplex melting furnace.

2 Deming triplex pumps, 4"x6".

1 steel oil storage tank, 17 bbls. for melting room.

1 steel oil storage tank, 17 bbls. for engine room.

1 steel clean up tank, 4'x5'.

6 steel fuel oil storage tanks, 109 bbls. each capacity.

With all line and countershafts, clutches, pulleys, belting, piping and wiring, etc. [194]

1 office building, 3 rooms, with furniture, records, etc.

1 supts. residence, 5 rooms and bathroom, with furniture.

1 cottage, 4 rooms and pantry, occupied by Frank Russell.

1 boarding-house building, 4 rooms.

1 doctor's office and drug-store, 2 rooms.

1 cottage, 3 rooms and bathroom, occupied by surveyor.

1 cottage, 3 rooms, occupied by doctor.

1 cottage, 5 rooms, occupied by R. Speed, Guard.

1 cottage, 3 rooms, occupied by Wm. Speed, Nightwatch.

1 cottage, 3 rooms and bathroom occupied by melter.

1 cottage, 4 rooms and bathroom, occupied by batteryman.

1 cottage, 4 rooms and bathroom occupied by mill foreman.

1 cottage, 4 rooms and bathroom occupied by shift boss.

1 cottage, 3 rooms and bathroom occupied by engineer.

1 cabin, 1 room, occupied by engineer.

1 club house, containing 1 social hall, 2 bathrooms and 9 bedrooms furnished.

1 club house containing 2 three room apartments, 1 two room apartment, 2 bedrooms, 2 bathrooms, all furnished.

1 finished adobe garage.

1 galvanized iron garage.

1 corral and sheds.

1 shoe shop.

#### Pumping Plant.

1 galvanized pump-house, containing 1-6"x8" Dean triplex pump and water line.

1-10 h. p. motor, with starting equipment.

1 wooden building, containing,

2 steam pumps, and steam line.

#### Miscellaneous.

1 wooden building, covered with galvanized iron for lime storage.

1 wooden building for cyanide storage.

1 wooden building for fire hose and hose cart.

1 wagon scales.

At Marfa, Texas. (R. R. Station.)

6 steel oil storage tanks, 109 bbls. each capacity, on concrete foundations, with building containing pump and motor.

(Land is rented from railroad company.)



Mine.

Power-house.

- 1 new lath and plaster power-house building, containing, 2 De La Vergne oil burning engines, 120 h. p. each, complete with starting equipment.
- 1 Ingersoll-Rand compressor, 15 and 9x15, with receiver.
- 1 electric generator, 90 K. W. with switchboards, etc.
- 1 electric generator, 15 K. W.
- 1 lath & plaster building containing storeroom and shop.
- 1 lath & plaster building, pump-house, with pump and motor.
- 2 cooling water-towers and tanks.
- 1 concrete water-tank.
- 1 galvd. iron building, containing steel oil-storage tank. [195]

Mine (Continued).

Core Drill.

- 1 F—3 Calyx drill and equipment, with gas engine.

East Shaft Hoisting Plant.

- 1 wooden head frame, complete, with shaft, 2 cages and steel hoisting rope.
- 1 galvd. iron building, containing,
  - 1 Gates double steel drum.
  - 1 steam boiler and feed pump.
  - 1 electric equipment for hoisting purposes.
- 1 stone building containing blacksmith-shop, forge, drill, press, blower, etc.

- 1 stone building for grinding samples, with gas engine, sample crusher and pulverizer, etc.
- 1 stone building for roundhouse for Ford locomotives.
- 1 galvd. iron building for storage of carbide.
- 1 galvd. iron building containing two rock crushers, ore bin, two oil burning engines, pump and tramway gas engine.
- 1 tramway terminal complete.
- 5200 ft. double steel rope tramway, and 12 towers to support same.
- 1 telephone line and instruments, for tramway line.

South Shaft Hoisting Plant.

- 1 mine office building and furniture, and mine map.
- 1 cottage for mine foreman, 5 rooms and bathroom.
- 2 cottages for miners, 3 rooms each.
- 1 frame cottage, 1 room.
- 1 map-room building, with new map, with office for surveyor, two vacant rooms.

Several adobe shacks, about 20 in number, occupied by Mexicans.

- 1 wooden head frame complete, with hoisting cable, and wood ore bin.
- 1 building containing,
  - 1—35 h. p. W. C. Engine and hoist.
- 1 building containing,
  - 1 drill sharpener, and oil forge, blower, and emery-wheel.
- 1 rock garage building.

- 1 building for carbide storage.
- 1 building for fuse and caps storage.
- 1 wooden building for general storage purposes.

Joint Tunnel.

- 1 wooden ore bin.
- 1 corral and sheds.

Shaft No. 4.

- 1 wooden head frame.
- 1 wooden ore bin, 10 ton capacity.
- 1 building containing,
  - 1—6 h. p. gas engine and hoist, with steel cable.

Underground Hoist.

- 1 wooden head frame.
- 1—6 h. p. gas engine and hoist, with steel cable.

[196]

Magazines.

- 3 powder magazines, for powder storage.

Surface Hauling System.

- 5200 ft. 24" gauge track.
- 2 Ford motors used as locomotives.
- 5—2 ton side dump cars.

Underground Workings.

About 24 miles of tunnels, drifts, crosscuts, etc.  
with track, ore cars, buckets, pipe-lines, air  
lines, windlasses, ladders, chutes, telephone  
lines, mining tools, wheelbarrows, etc.

Also 50 h. p. motor and compressor and receiver,  
just installed. [197]

## PRESIDIO MINING COMPANY.

Inventory of Supplies on Hand October 1st, 1918.

Articles.	Amount.	Cost.
MINE.		
Powder	342 boxes	\$3728.00
Fuse	17700 ft.	114.55
Caps	16800	240.25
Caps—Electric	4600	249.00
Igniters	3000	158.09
Carbide	700 lbs.	50.80
Coal—Blacksmith's	11.25 tons	315.45
Drill Steel—hand	130 bars	724.14
Drill Steel—machine	18 bars	134.45
Pick Steel	5 bars	16.55
Pick Handles	6 doz.	54.00
Hammer Handles—36"	6 doz.	36.00
Hammer Handles—18"	72 doz.	52.10
Atlantic Red Oil	1 bbl.	23.65
Summer Black Oil	50 gals.	10.00
Polarine	102 gals.	28.60
Oilite	2.5 bbls.	72.50
Black Pipe—3"	49 pcs.	570.00
Crusher Shoes—Sturte-		
vant	2	125.50
Crusher Dies	1	71.75
Crusher Cheek Plates	2	45.00
Toggle Bearings	12	27.28
Toggles	10	95.63
Crusher Shoes—E. P.		
Fdry.	6	215.97
Crusher Dies	3	124.08

Articles.	Amount.	Cost.
Belt—16"x6 ply	52 ft.	104.88
Splices	279	11.16
Track Cable	5600 ft.	2521.82
Compressor Pump	1	1316.64
Wire Rope (Tram)	1	1634.94
Hoisting Cable	600 ft.	170.14
Ore buckets	6	263.00
Electric Motor — 50 H. P.	1	700.00
IN TRANSIT.		
Summer Black Oil	2 bbls.	22.88
Ursa Gas. Engine Oil	2 bbls.	69.30
Belt—16"x6 Ply.	52 ft.	107.02
		<hr/> \$14,205.12

# MILL

Boss-Heads	3	114.18
Cams	3	149.25
Cam Shafts—10 stamp	1	175.05
Cam Shafts— 5 stamp	2	234.70
Dies	12	191.05
Shoes	17	337.65
Tappetts	3	61.29
Liners Back	5	72.50
Liners End	18	120.60
Stems	3	164.03
Spouts	3	65.80
Liners, Discharge, Feed End, Shell	1 set	1000.00
Lips Feed	9	11.40
Rollers	4	294.33

Articles.	Amount.	Cost.
MILL (Continued)		
Tires	1	75.00
Pebbles	89660 lbs.	1383.95
Steel Balls	10200 lbs.	586.50
Spirals Conveyor	26	25.65
Spirals Classifier	199	155.25
Cyanide	13000 lbs.	4852.90
Lime	95670 lbs.	574.00
Sulphate—Ferrous	2400 lbs.	105.60
Thickeners—Gear	2	72.91
Zinc Shavings	3150 lbs.	693.15
Borax Glass	2950 lbs.	931.90
Bi-carbonate Soda	9650 lbs.	509.50
Fire Clay	8 sks.	8.00
Acid—H. C. L.	2 c. b.	27.70
Screens	1 set	167.39
Worms	1	19.83
Worm Gears	2	215.48
Wire	15000 ft.	21.95
Belt—14"x7 Ply	1	380.25
Caps Bearing	3	4.45
Furnace Linings	4 sets	200.00
Cylinders Eng. D-204	1	600.00
Cylinder Linings	1	215.00
Pistons	1	608.65
Compressor Cylinder	1	50.00
Miscellaneous Parts		180.20
Cylinder Heads Eng.		
D-398	1	182.96
Cylinder Linings	1	160.00
Pistons	2	472.89



Compressor Cylinder	1	150.00
Compressor Piston	1	60.00
Miscellaneous Parts		180.20
Electric Lamps, 25 watt.	155	32.55
Capital Cylinder Oil	1 bbl.	27.44
Albany Compound	2 bbls.	130.20
Oilite	6 bbls.	174.30
Belt Dressing	15 lbs.	6.30
Transmission Rope	_____	_____
Babbitt	100 lbs.	66.03
Salt	1 ton	4.10
Belt—4" x5 Ply	100 ft.	46.80
Belt—6" x6 Ply	115 ft.	80.50
Belt—8" x6 Ply	110 ft.	100.89
Belt—10"x8 Ply	100 ft.	100.00
Belt—10"x7 Ply	110 ft.	141.23
Belt—12"x8 Ply	110 ft.	225.33
Belt—12"x6 Ply	110 ft.	165.55
Belt—14"x6 Ply	65 ft.	154.90
Glass	12000 lbs.	60.00

IN TRANSIT.

Stamp Stems	4	291.40
Ursa Gas Engine Oil	10 bbls.	346.50
Zinc Shavings	5000 lbs.	1039.40

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20059.51

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FUEL ACCOUNT

Wood	35-7/8 cords	124.21
Oil	1008.7 bbls.	4033.31

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[199] 4157.52

TOTAL OF ALL SUPPLIES.

MINE .....	\$14205.12
MILL .....	20059.51
FUEL ACCOUNT .....	4157.52

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\$38422.15

[200]

**Exhibit "C."**  
**LIST OF EMPLOYEES OF PRESIDIO MIN-  
ING CO.**

October 10, 1918.				
Position.	Number.	Nationality.	Wage.	Increase.
Superintendent	1	White	450.00 per	None
Mill Foreman	1	"	300.00 "	None
Engineer—Surveyor	1	"	175.00 "	15.00 per month
Assayer	1	Mexican	125.00 "	None
Bookkeeper	1	White	150.00 "	None
Mine Foreman	1	"	225.00 "	25.00 per month
Mine Shift Boss	1	"	150.00 "	15.00 "
Mine Shift Boss	2	Mexicans	3.00 day	.50 " day
Mill Shift Boss	2	White	5.00 "	.50 "
Battery Foreman	1	"	5.00 "	.50 "
Battery Helpers	3	Mexicans	2.65 "	.25 "
"	3	"	2.25 "	.25 "
Tube Mill Operators	3	"	2.25 "	.25 "

Position.	Number.	Nationality.	Wage.	Increase.
" " Helpers	3	"	2.00	"
Filter Tender	1	"	2.00	"
Treatment Men	3	"	2.00	"
Precipitation Men	2	"	2.00	"
Dryer & Melter	1	White	4.00	"
Master Mechanic	1	"	5.50	"
" " Helper	1	Mexican	2.50	"
Mill Engineer, Chief	1	White	5.00	"
" "	1	"	4.00	"
" " Helpers	1	Mexican	3.50	"
" " "	3	"	2.00	"
Mill Blacksmith	1	"	2.75	"
Carpenter	1	White	4.00	"
" " Helper	1	Mexican	2.50	"
Janitors	2	"	1.75	"
Cartman	1	"	1.75	"
Laborers	4	"	1.75	"

Position.	Number.	Nationality.	Wage.	Increase.
Mine Engineer, Chief	1	White	5.00	" "
" " Helper	1	Mexican	1.75	" "
Hoist Engineer	1	"	4.00	" "
" "	1	"	2.75	" "
" "	1	"	1.75	" "
Mine Blacksmith	1	"	3.25	" "
" " Helper	1	"	1.75	" "
" Repair Man	1	"	2.00	" "
" " Man Helper	1	"	1.75	" "
Motor Ore Car Driver	1	"	2.25	" "
" " Brakes	1	"	1.75	" "
Tool Sharpener	1	"	2.00	" "
Tool " Helper	1	"	1.75	" "
Machine Drill Men	10	"	2.50	" "
" " Helpers	10	"	1.75	" "
Miners	20	"	1.75	" "
Muckers	50	"	1.75	" "

Position.	Number.	Nationality.	Wage.	Increase.
Carmen	30	"	1.75 "	.25 "
Station Tenders	6	"	1.75 "	.25 "
Sample Grinder	1	"	1.75 "	.25 "
Mine Nightwatchmen	3	"	1.75 "	.25 "
Tool Nippers (Boys)	3	"	1.00 "	.25 "
Crusher Men	4	"	1.75 "	.25 "
Tramway Foreman	1	White	5.50 "	.50 "
Asst. to Foreman	1	Mexican	2.25 "	.25 "
Engineer, Tramway & Crush.	1	"	2.75 "	.50 "
Cable Tender & Lineman	1	"	1.75 "	.50 "
Mine Terminal Men	4	"	1.75 "	.50 "
Mill Terminal Men [201]	3	"	1.75 "	.25 "
Weigher (Boy)	1	"	1.50 "	.25 "
Truck Driver	1	"	1.75 "	.25 "
Nightwatch, Mill Bldgs.	1	White	105.00 Mo.	None
Guard	1	"	130.00 "	"
Total amount of increase per month of				
30 days.....				\$1727.50



[Endorsed]: Filed Nov. 2, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [202]

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In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.

PRIMARY SUIT.

No. 196—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

In the District Court of the United States, for the  
Western District of Texas, at El Paso.

AUXILIARY SUIT.

No. 114—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT and L. M.  
DOHERTY,

Defendants.

**Stipulation Allowing Fees of Receiver and His Attorney.**

Walter B. Maling, Receiver herein, having filed in said Court first above mentioned, his report of his proceedings as such Receiver, from the 23d day of February, 1918, and also having therein asked said Court for an allowance to himself and his attorney, Frank R. Wehe, Esq., on account of their services as such Receiver and attorney herein, covering the year 1918, in order that the expenses of the receivership may be treated as deductions from the net income of such receivership during this fiscal year; [203]

AND IT APPEARING that the above-named defendants and each of them, have heretofore consistently opposed and objected to the appointment of any Receiver in said cause; and that the appointment of said or any Receiver in said action was and is contended by said defendants to be without any authority or jurisdiction in said Court to make such appointment, and is without any foundation in either the pleadings or the proof or records in said cause, to justify the same; and that the said defendants have preserved for review on appeal by the Circuit Court of Appeals, for the Ninth Judicial Circuit, each and all of their said objections to the appointment of said or any Receiver;

AND IT ALSO APPEARING that on account of the probability that said Court may not be able to hear said record until after the close of the fiscal year on account of the illness of the Judge of said

Court who is familiar with all of the said matters, and who appointed said Receiver;

NOW, THEREFORE, IT IS HEREBY STIPULATED that nothing in this stipulation contained shall be, or be construed to be any waiver, surrender, modification, estoppel, or limitation of any kind or character upon said defendants' said objections, and /or upon the full right of said defendants, or each or any of them, to insist in all proper places and at all proper times upon their said objections to the appointment of said or any Receiver, and/or upon any proceedings based upon said or similar objections that said defendants, or any or either of them, may hereinafter be advised to take;

AND IT IS FURTHER HEREBY STIPULATED that the sum of Four Thousand Two Hundred Seventy and 76/100 (\$4,270.76) Dollars is a reasonable sum to be allowed said Receiver as such fees from the 23d day of February, 1918, to the 31st day of December, 1918, and that a like sum is a reasonable sum to be [204] allowed said Frank R. Wehe for his fees as attorney during the same period, and that any Judge of said Court may make an order to that effect, and that thereupon said Receiver may draw from the funds now in his hands the said sums and pay the same to himself and his said attorney as above stipulated.

Dated this 11th day of December, A. D. 1918.

WM. F. ROSE,

Attorney and Solicitor for Complainants.

R. T. HARDING and

HENRY E. MONROE,

Attorneys and Solicitors for said Defendants.

J. J. DUNNE,

Of Counsel.

It is so ordered.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Dec. 11, 1918. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [205]

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In the Southern District of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,

Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

### **Supplement to First Report of Receiver.**

Supplementing the report of the Receiver, filed herein on the —— day of October, 1918, the following is added thereto:

Commencing on page 8, and being paragraph 15, of said report, it was intended by the Receiver to report the total expenses for mining, milling, general expense and supplies at Shafter, Texas, by months, for the month of February up to and including the month of September, 1918, together with the office expense in San Francisco for each of said months, and to attach thereto a comparative statement of the same expense during the previous year of 1917 for the same months, so as to satisfy the Court of the probability, judging alone from the comparative expense accounts, that the administration of the Receiver was efficient, and that the expense of the management of the property under the Receiver did not exceed that of the management of the Company during a corresponding period in 1917.

However, it has since been discovered that in taking the items from the office books and papers the error was made of considering capital expenditure as expenses, and also in treating [206] supplies purchased by the Company as an item of expense, when as a matter of fact they are capital investments and become expenditures only when they are used. This was done to the extent that the Receiver was credited with items for current expense that were really the use of supplies on hand

at the time of taking over the property by the Receiver and thus were not really expenses of the receivership, and likewise by making like charges against the current expense statements of the Company account of 1917 and thus increasing the apparent expenses.

Since that time the Receiver has had a table of the comparative statements of operating and administering expenses for the period of February 1st, 1917, to October 31st, 1917, and February 1st, 1918, to October 31st, 1918, prepared by an expert, after a careful examination of the books and reports in the office, and the following is a copy of such statement:

	FEBRUARY	
	1917	1918
Mine Expense .....	\$14,285.40	\$14,087.03
Mill Expense .....	10,814.56	10,669.35
General Expenses, Shafter..	2,254.04	2,932.65
Expenses, San Francisco ...	1,448.45	256.05
	<hr/>	<hr/>
Total .....	\$28,802.45	\$27,945.08
	MARCH	
	1917	1918
Mine Expense .....	\$12,727.68	\$13,560.24
Mill Expense .....	10,530.19	12,901.31
General Expenses, Shafter..	3,238.65	2,305.78
Expenses, San Francisco ...	1,091.25	1,222.45
	<hr/>	<hr/>
	\$27,587.77	\$29,989.78



APRIL

	1917	1918
Mine Expense .....	\$13,000.15	\$13,219.69
Mill Expense .....	11,699.20	9,138.90
General Expenses, Shafter..	8,147.67	1,686.18
Expenses, San Francisco ...	889.85	629.20
	<hr/>	<hr/>
	\$33,736.87	\$24,673.97
Less Improvements .....	2,923.44	
	<hr/>	<hr/>
Total .....	\$30,813.43	\$24,673.97

MAY

	1917	1918
Mine Expense .....	\$14,177.14	\$12,963.23
Mill Expense .....	9,830.44	11,344.43
General Expenses, Shafter..	6,298.57	2,218.59
Expenses, San Francisco ...	2,247.60	2,376.42
	<hr/>	<hr/>
	\$32,553.75	\$28,902.67
Less Improvements .....	3,720.10	
	<hr/>	<hr/>
Total Costs .....	\$28,833.65	\$28,902.67

JUNE

	1917	1918
Mine Expense .....	\$11,527.76	\$12,211.81
Mill Expense .....	11,678.32	11,688.23
General Expenses, Shafter..	11,658.29	2,050.66
Expenses, San Francisco ...	1,333.31	617.33
	<hr/>	<hr/>
	\$36,197.68	\$26,568.03
Less Improvements .....	8,914.23	
	<hr/>	<hr/>
Total Costs .....	\$27,283.45	\$26,568.03

## JULY

	1917	1918
Mine Expense .....	\$11,198.19	\$12,828.65
Mill Expense .....	11,823.44	12,051.06
General Expenses, Shafter..	8,776.90	2,578.93
Expenses, San Francisco ...	824.75	767.45
Total .....	<u>\$32,623.28</u>	<u>\$28,226.09</u>
Less Improvements .....	5,695.52	
Total Costs .....	<u>\$26,927.76</u>	<u>\$28,226.09</u>

## AUGUST

	1917	1918
Mine Expense .....	\$14,876.63	\$12,603.29
Mill Expense .....	12,106.19	10,425.42
General Expenses, Shafter..	9,709.84	2,132.78
Expenses, San Francisco ...	1,245.20	738.18
Total .....	<u>\$37,937.86</u>	<u>\$25,899.67</u>
Less Improvements .....	9,709.84	
Total Costs .....	<u>\$28,228.02</u>	<u>\$25,899.67</u>

## SEPTEMBER

	1917	1918
Mine Expense .....	\$12,239.04	\$11,112.43
Mill Expense .....	10,709.67	12,589.03
General Expense, Shafter ..	14,332.90	2,063.45
Expenses, San Francisco ...	1,794.01	523.88
Total .....	<u>\$39,075.62</u>	<u>\$26,288.79</u>
Less Improvements .....	10,572.54	
Total Costs .....	<u>\$28,503.08</u>	<u>\$26,288.79</u>

OCTOBER		
	1917	1918
Mine Expense .....	\$15,644.22	\$ 9,851.70
Mill Expense .....	12,281.86	10,508.90
General Expense, Shafter ..	9,451.27	4,831.17
Expenses, San Francisco ...	871.00	585.28
	<hr/>	<hr/>
	\$38,248.35	\$25,777.05
Less Improvements .....	6,918.13	
	<hr/>	<hr/>
	\$31,330.22	\$25,777.05

#### RECAPITULATION.

TOTAL COSTS	1917	1918
February .....	\$ 28,802.45	\$ 27,945.08
March .....	27,587.77	29,989.78
April .....	30,813.43	24,673.97
May .....	28,833.65	28,902.67
June .....	27,283.45	26,568.03
July .....	26,927.76	28,226.09
August .....	28,228.02	25,899.67
September .....	28,503.08	26,288.79
October .....	31,330.22	25,777.05
	<hr/>	<hr/>
	\$258,309.83	\$244,271.13

It will be noted that the above statement includes all expenses which are properly included as capital investments, except such as become operating expense, and does not comprehend the total disbursements.

#### FINANCIAL STATEMENT.

That at the time of making said first report said Receiver was unable to furnish a complete finan-

cial statement during the time covered by it, but said expert has also prepared a financial statement from February 23d, 1918, when the Receiver took charge, until October 31st, 1918, which follows, and is hereby submitted as a part of this report: [210]

STATEMENT OF RECEIPTS AND DIS-  
BURSEMENTS FOR THE PERIOD FEB-  
RUARY 23d to OCTOBER 31st, 1918.

Funds on Hand at Commencement of Receivership.  
1918.

Feb. 23—Anglo & London Paris National		
Bank .....	\$30,247.60	
Wells Fargo Nevada National		
Bank .....	28,070.67	
Marfa National Bank (check-		
ing) .....	20,777.73	
Marfa National Bank (special)		15,300.00
Cash on hand in safe at Shafter		1,352.93
		<hr/>
		\$95,748.93

Receipts During Receivership.

1918.

Feb.	28 ..	\$31,753.22	6.00		
		Bullion	Misc.	Int. Earned	Ore. Sales
Mar.	31 ..	46,192.88	128.15	49.32	
Apr.	30 ..	48,757.24	728.87	550.96	
May	30 ..	49,472.12	208.70		
June	30 ..	51,004.18	136.26		
July	30 ..	49,540.01	25.00		7,483.94
Aug.	31 ..	64,128.51	11.25	306.00	
Sept.	30 ..	44,733.56	74.80	921.05	
Oct.	31 ..	45,026.03	3.07	104.28	
		<hr/>	<hr/>	<hr/>	<hr/>
		430,607.75	1,322.10	1,931.61	7,483.94

Summary of Receipts.

Bullion Receipts .....	\$430,607.75
Miscellaneous .....	1,322.10
Interest earned .....	1,931.61
Ore Sales .....	7,483.94

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Total ..... \$441,345.40

[211]

Disbursements During Receivership.

		Paid at San Francisco	Mine Operating Exps.	Total Amt. Expenses
1918.				
Feb.	23/28 ..	\$ 50.00	\$ 21,737.79	\$ 21,787.79
Mar.	21 ..	11,960.35	29,467.75	41,428.10
Apr.	30 ..	1,340.01	27,702.76	29,042.77
May	30 ..	2,376.42	25,768.05	28,144.47
June	30 ..	617.33	33,464.67	34,082.00
July	31 ..	792.45	22,425.65	23,218.10
Aug.	31 ..	738.18	27,650.68	28,388.86
Sept.	30 ..	586.68	24,883.71	25,470.39
Oct.	31 ..	585.28	28,440.50	29,025.78
		<hr/>	<hr/>	<hr/>
		\$19,046.70	\$241,541.56	\$260,588.26

Summary of Receipts and Disbursements.

Cash on hand at commencement of Re- ceivership .....	\$ 95,748.93
Receipts during Receivership .....	441,345.40
	<hr/>
Total .....	\$537,094.33
Total disbursements .....	260,588.26
	<hr/>
Balance .....	\$276,506.07
Amount invested in Liberty Loan Bonds and W. S. S. ....	185,834.00
	<hr/>
Balance on hand October 31st, 1918	\$ 90,672.07

The above amount of \$90,672.07 was on October 31st, 1918, deposited in the following Banks:

Mercantile National Bank .....	\$10,842.86
Bullion in transit .....	45,026.03
Marfa National Bank (checking account) .....	18,849.30
Marfa National Bank (special account)	15,606.00
Anglo & London Paris National Bank	347.88
<hr/>	
Total .....	\$90,672.07

[212]

It is further reported that pending the hearing on the report of the Receiver herein, the parties stipulated that the Receiver should receive during the year 1918 for the fees of himself and his attorney the sum of Four Thousand Two Hundred and Seventy and 76/100 (4,270.76) Dollars to be paid to each, which stipulation was in writing, and it was further stipulated that the same might be presented to any Judge of this court and an order made thereon, owing to the absence of the presiding Judge of this court.

That such order was made on the 11th day of December, 1918, and the Receiver has paid to himself the said sum of Four Thousand Two Hundred and Seventy and 76/100 (4,270.76) Dollars and to his attorney, Frank R. Wehe, a like sum, out of the funds of said Receivership.

WHEREFORE your Receiver prays that said report as modified by this supplement be approved and that the said order and stipulation permitting



the payment of said fees to him and his attorney be ratified.

Respectfully submitted,  
WALTER B. MALING,  
Receiver.

FRANK R. WEHE,  
Attorney for Receiver.

[Endorsed]: Filed Dec. 28, 1918. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[213]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, Second Division.

No. 196—EQUITY.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

**Stipulation Inviting Judge to Visit Mine.**

IT IS HEREBY STIPULATED by and between  
the parties that the Hon. W. C. Van Fleet, Judge  
of said court, is respectfully invited to visit the  
premises in controversy, the Presidio Mine, at  
Shafter, Texas, and that the expenses of his visit

shall be considered a charge against the Receiver-ship in the action and shall be allowed the Receiver in his accounts therein rendered.

Dated this 27th day of February, one thousand nine hundred and nineteen (1919).

WM. F. ROSE,

Attorney for Plaintiffs.

R. T. HARDING and

HENRY E. MONROE,

Attorneys for Defendants

J. J. DUNNE,

Of Counsel for Defendants.

So ordered.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Mar. 3, 1919. W. B. Mal-  
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[214]

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In the Southern Division of the United States Dis-  
trict Court for the Northern District of Cali-  
fornia, Second Division.

No. 196—IN EQUITY.

W. S. OVERTON and CARL A. MARTIN,

Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

**Notice of Filing Receiver's Account.**

To Complainants and Their Solicitor, Wm. F. Rose,  
Esq., and to Defendants and Their Solicitors,  
Messrs. Harding and Monroe, and J. J. Dunne:  
Gentlemen:

I hereby deliver to you a copy of the second report of the receiver from October 31, 1918, to and including the 31st day of October, 1919, and notify you that on Monday, the 15th day of December, one thousand nine hundred and nineteen (1919), at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, and at the courtroom of said court, I will call the same to the attention of the Court and ask that a hearing be had thereon.

Dated this 10th day of December, one thousand nine hundred and nineteen (1919).

FRANK R. WEHE,  
Attorney for Walter B. Maling, Receiver Presidio  
Mining Company. [215]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

IN EQUITY—No. 196.

W. S. OVERTON and CARL A. MARTIN,  
Complainants,

vs.

PRESIDIO MINING COMPANY, a Corporation,  
WM. S. NOYES, B. S. NOYES, L. OS-  
BORN, JOHN W. F. PEAT, and L. M.  
DOHERTY,

Defendants.

**Second Report of Receiver.**

Walter B. Maling, Receiver herein, presents this as the second report of his receivership:

1. That he filed his first report herein on the —— day of October, 1918, with a financial statement and report therein from the date of his appointment to the 31st day of October, 1918, and he renders this report and account for the period covering the time from the 31st day of October, 1918, up to and including the 31st day of October, 1919.

2. That during all of the time covered by this report he has continued in possession of and in charge of the property of the Presidio Mining Company and has continued to operate the mining claims of the Company.

3. That during all of the time of his receivership he has to the best of his ability conducted and managed the said trust in good faith, as economically as conditions would permit, and for the best interests of the parties to said action and as ordered by the Court. [216]

4. That he has continued as his representative at the mine and in charge of the operations thereof in Texas, Mr. F. C. Handy, and has employed at the mine in charge of its various departments skilled men experienced in the line of work of which each was respectively in charge.

5. That weekly and monthly reports of the operations at the mine have been sent to the company's office in this city, and the same have been filed and kept open to the inspection of all of the

parties to said action, and that all of the operations at said property and all of the business and proceedings of said receivership have been recorded in said office, and kept in such shape as to be open to the inspection and information of all the parties to said action.

### FINANCIAL STATEMENT.

That there was on hand on October 31st, 1918, as a balance in cash on hand at the date of the last report, the sum of \$90,672.07, deposited in the following banks:

Mercantile National Bank.....	\$10,842.86
Bullion in Transit.....	45,026.03
Marfa National Bank (checking account)	18,849.30
Marfa National Bank (special account) ..	15,606.00
Anglo & London Paris National Bank....	347.88

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Total.....\$90,672.07

There was also on hand at said time, invested in Liberty Loan Bonds, War Savings Stamps and Treasury Certificates, the sum of.....\$185,834.00

And also bonds on hand at the commencement of the Receivership, in the sum of ..... 25,000.00

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Total.....\$210,834.00

278      *Presidio Mining Company et al. vs.*

Receipts from November 1st, 1918, to October 31st,  
1919, inclusive.

Bullion Receipts:

1918		
Nov. 30.....	\$26,146.95	
Dec. 31.....	44,737.24	
1919		
Jan. 31.....	44,177.95	
Feb. 28.....	46,964.86	
Mar. 31.....	45,911.59	
Apr. 30.....	46,308.82	
May 31.....	49,424.55	
June 30.....	45,459.29	
July 31.....	46,222.85	
Aug. 31.....	46,173.68	
Sep. 30.....	52,796.86	
Oct. 31.....	50,898.71	\$545,223.35

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San Francisco Miscellaneous Receipts:

1918		
Mar. 31.....	\$5.55	5.55

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Miscellaneous Receipts at Mine on Sale  
of Scrap and other Miscellaneous  
Property:

1918		
Nov. 30.....	\$752.22	
Dec. 31.....	664.25	
1919		
Jan. 31.....	39.33	
Feb. 28.....	28.30	
Mar. 31.....	9.00	



Apr. 30.....	176.55	
May 31.....	13.00	
June 30.....	502.15	
July 31.....	10.35	
Aug. 31.....	14.85	
Sept. 30.....	33.60	
Oct. 31.....	158.30	2,401.90

Interest on United States Securities and  
Bank Balances:

1918

Nov. 30.....	1,373.13
Dec. 31.....	167.85

1919

Jan. 31.....	175.00	
Feb. 28.....	503.84	
Mar. 31.....	1,403.95	
Apr. 30.....	1,453.80	
May 31.....	651.95	
June 30.....	59.05	
July 31.....	647.89	
Aug. 31.....	415.52	
Sept. 30.....	1,379.49	
Oct. 31.....	1,493.92	9,725.39

[218] Total Receipts.....\$557,356.19

Statement of Mine Disbursements, Including  
Operating and Supply Costs.

1918

Nov. 30.....	\$30,946.72
Dec. 31.....	29,244.94

## 1919

Jan. 31.....	27,803.21	
Feb. 28.....	25,443.86	
Mar. 31.....	27,994.08	
Apr. 30.....	24,060.21	
May 31.....	27,154.86	
June 30.....	28,393.90	
July 31.....	27,660.52	
Aug. 31.....	22,747.72	
Sept. 30.....	26,159.60	
Oct. 31.....	26,327.35	\$323,936.97

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## Statement of Expenses Paid at San Francisco.

## 1918

Nov. 30.....	\$ 619.91
Dec. 31.....	785.75

## 1919

Jan. 31.....	640.00	
Feb. 28.....	731.75	
Mar. 31.....	1,241.76	
Apr. 30.....	589.47	
May 31.....	583.25	
June 30.....	635.78	
July 31.....	875.91	
Aug. 31.....	598.43	
Sept. 30.....	591.30	
Oct. 31.....	701.70	8,595.01

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Statement of Other Expenses.

Dec. 1918. Receiver and Receiver's At-		
torney fees to December 31st, 1918,		
allowed by Court on stipulation of		
the parties .....	8,541.52	
Income Tax Payments (Paid under Protest:)		
Mch. 1919—1st Installment, \$28,750.		
June " —2d Installment, 28,750.		
Sept. " —3rd Installment, 20,631.69	78,131.69	

Expenses of Litigation:

Dec. 1918—Fee of Master, as allowed		
by the Court.....	2,500.00	

[219] Amount carried forward....	\$421,705.19	
Amount brought forward....	\$421,705.19	

Expenses of Auditor:

That there was paid out under order of the Court to Haskins & Sells, as expenses of the audit:

Mch. 1919.....	\$550.	
Apr. " .....	525.	
May " .....	510.14	
June " .....	707.	
July " .....	632.26	
Sept. " .....	250.00	3,174.40

Also expended for furniture and fixtures in San Francisco office:

May, 1919.....	171.50	
June " .....	49.00	220.50

Total Disbursements.....\$425,100.09

SUMMARY OF RECEIPTS AND  
DISBURSEMENTS.

## Receipts.

Bullion .....	\$545,223.35
San Francisco Miscel- laneous.....	5.55
Mine Miscellaneous .....	2,401.90
Interest .....	9,725.39

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\$557,356.19

## Disbursements.

## Administration Expenses

San Francisco.....	\$ 8,595.01
Mine operating expense ..	323,936.97
Receiver and Attorney ..	
Fees .....	8,541.52
Income Tax Payments ...	78,131.69
Expenses of Litigation...	2,500.00
Expenses of Auditor.....	3,174.40
Furniture and Fixtures..	220.50

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425,100.09

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Net income from October 31st, 1918, to  
and including October 31st, 1919....\$132,256.10  
[220]

## SECURITIES.

Securities on hand October 31st, 1918,  
consisting of Liberty Loan Bonds, War  
Savings Stamps and Treasury Certifi-  
cates ..... \$210,834.00

In addition to the above your Receiver purchased the following securities:

1919

Feb. 28—U. S. Interim Certificate, bearing 4½% interest .....	\$45,000.	
Accrued interest from Jan. 16, 1919 .....	238.56	45,238.56

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Apr. 30—Victory Loan Bonds purchased in Texas.....	35,000.00
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May 9—Victory Loan Bonds purchased in San Francisco.....	45,000.00
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July 11—U. S. Certificates of indebtedness bearing 4½% interest .....	\$45,000.
Accrued interest from July 1, 1919 .....	55.48

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Total.....	\$381,128.04
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Of the above securities the following were redeemed by the Government and the cash received by your Receiver:

1918

Nov. 22—Loan Certificate bought Aug. 6, 1918.....	\$60,000.
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1919

July 11—U. S. Interim Certificates Feb. 28, 1919.....	45,238.56	105,238.56
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Balance U. S. Securities now on hand.....	\$275,889.48
Total amount of U. S. Securities pur- chased between October 31st, 1918, and October 31st, 1919.....	\$170,294.04
Total amount redeemed during same period .....	105,238.56
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[221]              Balance.....	\$ 65,055.48

## RECAPITULATION.

Cash on hand October 31st, 1918.....	\$ 90,672.07
Receipts from October 31st, 1918, to and including October 31st, 1919....	557,356.19
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Total.....	\$648,028.26
Total Disbursements.....	425,100.09
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Balance .....	\$222,928.17
Less amount invested in U. S. securi- ties during time of account.....	65,055.48
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Balance cash on hand Oct. 31st, 1919...	\$157,872.69
Represented by the following items:	
Deposited in Mercantile National	
Bank of San Francisco.....	\$ 76,399.93
Bullion in transit (cash subsequently)..	50,898.71
Marfa National Bank (checking ac- count) .....	13,986.40



Marfa National Bank (special ac-	
count) .....	16,236.48
Anglo & London Paris National Bank..	351.17

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Total.....\$157,872.69

Total cash and securities on hand October 31st,  
1919:

Bonds, etc., .....	\$275,889.48
Cash on hand.....	157,872.69

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Total.....\$433,762.17

### IMPROVEMENTS.

During the receivership a number of improvements have been made at the mine under order of the Court, and the following is a concise statement of the principal improvements with costs:

#### De La Vergne Engine Unit No. 3.

New De La Vergne Engine Unit No. 3 purchased for the [222] purpose of replacing the old steam engine at the mine, which necessitated the removal of the steam engine, reconstruction of the building foundations for building, and foundations for engine, and the following includes the cost of the engine, labor, hauling, freight, foundations for engine, etc., the items of which are found in the reports on file and in the different vouchers and pay-rolls, and being distributed over many months:

Materials	Labor	Freight	Hauling	Express	Total
\$11,905.40	1612.80	1473.07	807.70	50.57	15,849.54

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The above comprehends the costs which are applied to the engine proper.

It was deemed advisable by your receiver, after consultation with the parties to the action and the advice of Mr. W. S. Noyes, that it would be for the best interests of the trust to purchase said engine, which was a second-hand de la Vergne engine, in New York, which was offered at the price of \$8500, a new engine of the same type costing at that time in New York \$15,000. In making the purchase your receiver employed competent engineers in New York to make an examination of the engine and to only accept its delivery if in a condition satisfactory to them. In addition, after the engine was shipped, an engineer was employed from the De la Vergne Works in New York, taken to the mine, and it was there inspected by him and pronounced practically as good as new, so that it is apparent by the above account that the engine set up and in running order cost but little more than the first cost of a new engine in New York, making a large saving to the Company. [223]

#### Added Installation Costs.

That the installation of this new engine necessitated the purchase of new material for the power house at the mill, consisting of a new line shaft with pulleys, clutches, bearings, belt pits, foundations, etc., the cost of the whole being as follows, as per the vouchers and pay-rolls distributed over several months during the construction and now on file:

Materials	Labor	Hauling Freight	Express	Total
\$6785.96	\$861.90	\$682.77	\$286.40	\$8617.03

#### Power-house Building.

The new engine also necessitated the construction of a new building, with floors, changes to engines

D-398 and D-204, with muffle-pits, exhausts, etc., taking down steam plant, etc., costs of which are as follows, as per vouchers and pay-rolls distributed over several months and on file:

Materials	Labor	Freight	Hauling	Express	Total
\$1709.96	\$2288.61		\$82.60		\$4081.17

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### Allen Cone.

That a new Allen Cone was purchased, the cost of which as per vouchers on file was as follows:

Materials	Labor	Freight	Hauling	Express	Total
Cone	\$600.00	(No extra labor	\$39.96	\$14.03	\$711.91

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Lumber, etc. 57.92 furnished)

Electrical Equipment in Mine Power-house and East Shaft-house.

That there has been added to the equipment of the property a new electrical equipment in the mine power-house and East shaft house, with transmission lines, transformers, etc. and [224] underground compressor and motor, the cost of which as per vouchers and pay-rolls on file was as follows:

Materials	Labor	Freight	Hauling	Express	Total
\$7164.43	\$710.70	\$325.96	\$150.92	\$28.89	\$8380.90

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### Increased Wages to Workmen.

In the month of November the situation at the mine became critical on account of the loss of workmen and discontent with the then going wages. The management at the mine was at a disadvantage in holding its labor on account of the fact that labor in railroad work and other fields of labor in Presidio County had increased to such an extent that

the ordinary laborer at the mine could quit and get much higher pay at those places. The result was such that it was jeopardizing the running of the plant, whereupon your Receiver, with the consent of the parties to the action, authorized another raise in wages similar to the raise reported at the last report. The reports have not been received to show what the actual aggregate raise will amount to, but it is estimated by your Receiver that it will be somewhere between \$1500 and \$2000 per month. It was considered by your Receiver to be necessary to make this raise in order to maintain the operations at the mine, and on account of the high cost of living to those employed at the mine, and so as to meet higher wages paid in the vicinity.

Audit.

That under order of this Court a complete audit of the books of the Company in this City and at the Mine from the date of their opening after the fire in 1906 to the date thereof was made by Haskins & Sells, which report is on file. [225]

Your Receiver further reports that the fees of himself and his attorney have been paid to the 31st day of December, 1918; that neither have received any fees whatever for the year 1919. That the latest act of Congress passed as a war measure with reference to income tax on corporations is still in force, but it is rumored that the same may be reduced for the next year, hence it is proper that in making out the income tax statement covering this year's income, that all of the costs of the receivership of this year should be paid so as to make the

same a deduction on the income tax statement, and it is therefore advisable that the Court fix the fees of the Receiver for himself and his attorney for the year 1919.

WHEREFORE your Receiver prays that said report be approved, and that the fees for himself and his attorney be fixed by the Court and ordered paid from the funds on hand.

Respectfully submitted,  
WALTER B. MALING.

FRANK R. WEHE,  
Attorney.

[Endorsed]: Filed Dec. 10, 1919. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [226]

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(Title of Court and Cause.)

**Defendants' Objections to Receiver's Second  
Report.**

Now come the defendants above named, and in particular the defendant, the Presidio Mining Company, and object to the allowing of Walter B. Maling, the Receiver herein, and to the approval of the account of his report, dated the 10th day of December, 1919, and filed herein on the 10th day of December, 1919; and in this regard these defendants respectfully represent to this Court:

That the interlocutory order and decree appointing Walter B. Maling the Receiver herein was made and entered on the 20th day of February, 1918.

That the interlocutory decree determining the legal and equitable rights of the parties hereto was

made and entered on the 16th day of February, 1918.

That thereafter, and in due time, appeals were taken by these defendants from both of said decrees to the United States Circuit Court of Appeals, for the Ninth Circuit, and that on stipulation of the parties and the order of said Court, both appeals were heard together and upon the same record.

That in and by said interlocutory decree made and entered on the 16th day of February, 1919, a certain interlocutory injunction was kept in full force and effect.

That on the 27th day of October, 1919, the said Circuit Court of appeals filed its opinion in the matter of said appeal directing a final decree to be entered in this Court in accordance with said opinion, and further directing that the interlocutory injunction be dissolved and the Receiver discharged.

That the complainants have filed in said Circuit Court of Appeals a petition for diminution of record, and that in consequence [227] thereof the mandate of said Court has been stayed.

These defendants further represent to this Honorable Court that in the original and in all subsequent complaints, and on various motions made by them in open court, the complainants sought the appointment of a Receiver herein; but that on each and every occasion when the complainants sought the appointment of such Receiver, these defendants, and each of them, resisted such appointment with all the power at their command.



That after this Honorable Court had filed its opinion and decision herein directing among other things, the appointment of a Receiver but before the appointment of such Receiver, these defendants filed herein their petition and motion, and notice of motion to reopen this cause, and with all the power at their command opposed and resisted the appointment of a Receiver herein upon the ground that the appointment of such Receiver would be erroneous and unlawful, and not necessary for the protection of the rights of the complainants; but the complainants, with all the power at their command again urged and insisted upon the appointment of a Receiver herein.

These defendants further represent to this Honorable Court that when under the aforesaid circumstances, the appointment of a Receiver is finally determined to be erroneous, that such Receiver is compelled to return the property without deduction of any kind to the person from whom it has thus unlawfully been taken; and if the fees and expenses of such Receivership are to be paid at all, they are to be paid, not out of the fund which has thus wrongfully come into the hands of the Receiver, but by the parties litigant who have caused such Receiver to be appointed.

These defendants, for the reasons aforesaid, object therefore: [228]

(1) To the allowance and payment of any fees of said Receiver either for himself or for his attorney out of the fund now in his possession.

(2) The disbursements of the Receiver set forth on page 5 of said Report and Account and recapitulated on page 7 thereof include the sum of \$450 per month for twelve months, since the filing of the Receiver's last account and report, paid to F. C. Handy, an assistant or deputy employed by said Receiver, and \$100 per month for the same period of twelve months paid to Florence M. Handy, a bookkeeper employed by said Receiver, making a total of \$6600; that said sums are strictly expenses of receivership and were not to any extent whatsoever expenses that would have been incurred by these defendants had there been no receivership; but, on the contrary, the services for which said payments were made would have been and previous to the appointment of said Receiver were, performed by the duly elected officers of the corporation, Presidio Mining Company.

(3) The said disbursements of said Receiver also include traveling expenses amounting to \$826.56, Clerk's fees amounting to \$15, Premium on Receiver's Bond amounting to \$50 and the sum of \$3699.40 paid to Haskins and Sells, accountants, (said latter sum being incurred upon the insistence of the complainants), all of which sums are expenses of said Receivership, and no part of which would have been incurred or paid except for said receivership.

(4) That no part of said sums above specified, nor of the compensation now asked for by said Receiver for himself and his attorney for the period since the filing of said Receiver's last account, are